By Mr. ASHBROOK: A bill (H. R. 29477) granting an increase of pension to Nathan Wells; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29478) granting an increase of pension to Edward B. Westhafer; to the Committee on Invalid Pensions.

By Mr. AUSTIN: A bill (H. R. 29479) granting an increase of pension to Mary Lane Webster; to the Committee on Pensions.

By Mr. BOEHNE: A bill (H. R. 29480) granting an increase of pension to P. R. Baldridge; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29481) granting an increase of pension to Thomas J. Westfall; to the Committee on Invalid Pensions.

By Mr. COOPER of Pennsylvania: A bill (H. R. 29482) for the relief of George Wymer; to the Committee on Military Affairs.

By Mr. DENBY: A bill (H. R. 29483) granting an increase of pension to James H. Langley; to the Committee on Invalid Pensions.

By Mr. EDWARDS of Kentucky: A bill (H. R. 29484) granting an increase of pension to James H. Tinsley; to the Committee on Invalid Pensions.

By Mr. GRIEST: A bill (H. R. 29485) granting an increase of pension to William H. Sweigart; to the Committee on Invalid Pensions.

By Mr. LANGHAM: A bill (H. R. 29486) granting an increase of pension to Winfield S. Port; to the Committee on Invalid Pensions.

By Mr. LANGLEY: A bill (H. R. 29487) granting a pension to Ephraim A. Jones; to the Committee on Invalid Pensions.

By Mr. LAW: A bill (H. R. 29488) granting an increase of pension to James E. Fowler; to the Committee on Invalid Pensions.

By Mr. MOON of Tennessee: A bill (H. R. 29489) for the relief of William Shelton, executor of the estate of C. E. Shelton, deceased; to the Committee on War Claims.

By Mr. MORRISON: A bill (H. R. 29490) granting an increase of pension to Levi Cain; to the Committee on Invalid Pensions.

By Mr. ROBINSON: A bill (H. R. 29491) granting a pension to Samuel A. Mitchell; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29492) granting a pension to Anne E. Preddy; to the Committee on Invalid Pensions.

By Mr. WEBB: A bill (H. R. 29493) granting an increase of pension to Mark Donnelly; to the Committee on Invalid Pensions.

By Mr. WHEELER: A bill (H. R. 29494) granting an increase of pension to Benjamin F. Feit; to the Committee on Invalid Pensions.

PETITIONS, ETC.

Under clause 1 of Rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

By Mr. ANDERSON: Papers to accompany bills for relief of Harrison Barber, Samuel B. Crall, George Hora, James M. Francis, Titus Goodell, James McNary, Lewis Marka, Virel E. McCreary, Samuel D. Might, Burton S. Rathbun, Adam J. Sherman, Charles W. Thomas, John Tyrell, and Samuel Zink; to the Committee on Invalid Pensions.

Also, petition of the A. Bench Co., of Fremont, Ohio, against parcels-post law; to the Committee on the Post Office and Post Roads.

Also, petition of Rotter Post, No. 105, Grand Army of the Republic, of Greenspring, Ohio, favoring amendment to age-pension act of 1907; to the Committee on Invalid Pensions.

By Mr. ASHBROOK: Petition of Jesse J. Alexander Post, No. 474, Grand Army of the Republic, of New Cumberland, Ohio, for amendment to the age-pension bill; to the Committee on Invalid Pensions.

Also, paper to accompany bill for relief of Nathan Wells; to the Committee on Invalid Pensions.

By Mr. BUTLER: Petition of Wagonton (Pa.) Grange, No. 1305, Patrons of Husbandry, for Senate bill 5842; to the Committee on Agriculture.

By Mr. CALDER: Petition of Canal Board of State of New York, for surveying and charting rivers and lakes forming part of the canal system of New York; to the Committee on Railways and Canals.

By Mr. CANTRILL: Papers to accompany bills for relief of Alonzo Jones, Annie White, and Christopher T. Grinstead; to the Committee on Invalid Pensions.

By Mr. DALZELL: Petition of East End Presbyterian Church of Pittsburg, Pa., for the Burkett-Sims bill; to the Committee on Interstate and Foreign Commerce.

By Mr. GRIEST: Petition of Local Union No. 146, of the International Molders' Union of North America, of Columbia, Pa., for legislation to prohibit the sale of dairy products from diseased animals; to the Committee on Agriculture.

By Mr. HANNA: Paper to accompany bill for relief of estate of Samuel Lee; to the Committee on Claims.

By Mr. HUFF: Petition of Westmoreland Lodge, No. 415, Knights of Pythias, against Senate bill 614 and House bill 3075; to the Committee on the Post Office and Post Roads.

By Mr. MOON of Tennessee: Paper to accompany bill for relief of William Shelton, executor of the estate of C. E. Shelton; to the Committee on War Claims.

SENATE.

FRIDAY, *December 16, 1910.*

Prayer by the Chaplain, Rev. Ulysses G. B. Pierce, D. D.

The Journal of yesterday's proceedings was read and approved.

NOBEL PEACE PRIZE.

The VICE PRESIDENT laid before the Senate a communication from the Secretary of State, transmitting a copy of a circular issued by the Nobel committee, furnishing information as to the distribution of the Nobel peace prize for the year 1911 (S. Doc. No. 708), which, with the accompanying paper, was referred to the Committee on Foreign Relations and ordered to be printed.

REPORT ON DRAINAGE.

The VICE PRESIDENT laid before the Senate a communication from the Secretary of Agriculture, transmitting, pursuant to law, a report giving the aggregate of expenditures for drainage investigations under the Office of Experiment Stations to June 30, 1910 (H. Doc. No. 1180), which, with the accompanying paper, was referred to the Committee on Agriculture and Forestry and ordered to be printed.

VESSEL BRIG "WILLIAM."

The VICE PRESIDENT laid before the Senate a communication from the assistant clerk of the Court of Claims, transmitting the statement and conclusions of law filed under the act of January 20, 1885, in the French spoliation claims set out in the findings by the court relating to the vessel brig *William*, David Smith, master (H. Doc. No. 1206), which, with the accompanying paper, was referred to the Committee on Claims and ordered to be printed.

FRENCH SPOLIATION CLAIMS.

The VICE PRESIDENT laid before the Senate communications from the assistant clerk of the Court of Claims, transmitting the findings of fact and conclusions of law filed under the act of January 20, 1885, in the French spoliation claims set out in the annexed findings by the court relating to the following causes:

Vessel brig *Hopewell*, Henry Daudelot, master (H. Doc. No. 1187);

Vessel schooner *Jenny*, Peter Johnson, master (H. Doc. No. 1186);

Vessel ship *Pacific*, Samuel Kennedy, master (H. Doc. No. 1185);

Vessel ship *Delaware*, William Hawks, master (H. Doc. No. 1188);

Vessel brig *James*, William Campbell, master (H. Doc. No. 1189);

Vessel schooner *Hope*, George Fitzhugh, master (H. Doc. No. 1190);

Vessel schooner *Dispatch*, William Cutter, master (H. Doc. No. 1191);

Vessel ship *Poll Cary*, John Bessom, master (H. Doc. No. 1192);

Vessel ship *Nancy*, Archibald Cunningham, master (H. Doc. No. 1193);

Vessel ship *Victoria*, Lemuel Bourne, master (H. Doc. No. 1194);

Vessel schooner *Sisters*, Richard Johns, master (H. Doc. No. 1195);

Vessel brig *Defiance*, Joshua Jenkins, master (H. Doc. No. 1196);

Vessel brig *Hiram*, Francis Bourn, master (H. Doc. No. 1197);

Vessel ship *President*, John Boynton, master (H. Doc. No. 1198);

Vessel ship *Barbara*, Henry Clarke, master (H. Doc. No. 1199); and

Vessel schooner *Hannah*, Richard Bishop, master (H. Doc. No. 1200).

The foregoing findings were, with the accompanying papers, referred to the Committee on Claims and ordered to be printed.

The VICE PRESIDENT laid before the Senate communications from the assistant clerk of the Court of Claims, transmitting the conclusions of fact and of law and opinion filed under the act of January 20, 1885, in the French spoliation claims set out in the annexed findings by the court relating to the following causes:

Vessel brig *William*, James Gilmore, master (H. Doc. No. 1202);

Vessel ship *Hope*, John H. Seaward, master (H. Doc. No. 1203); and

Vessel ship *Alknomack*, Joel Vickers, master (H. Doc. No. 1204);

The foregoing findings were, with accompanying papers, referred to the Committee on Claims and ordered to be printed.

The VICE PRESIDENT laid before the Senate communications from the assistant clerk of the Court of Claims, transmitting the conclusions of fact and of law filed under the act of January 20, 1885, of the French spoliation claims set out in the annexed findings by the court relating to the following cases:

Vessel sloop *Lovina*, Alexander Morgan, master (H. Doc. No. 1205), and vessel brig *Experiment*, Abraham Dolby, master (H. Doc. No. 1201).

The foregoing findings were, with accompanying papers, referred to the Committee on Claims and ordered to be printed.

SITE FOR DISTRICT OF COLUMBIA REFORMATORY.

Mr. DU PONT. Mr. President, I present a communication, in the nature of a memorial, which I ask may be read. It is accompanied by a resolution (S. Res. 310), which I submit and ask that it may be read, printed, and lie on the table.

The VICE PRESIDENT. The Secretary will read the memorial, as requested, if there be no objection.

The Secretary read the memorial, as follows:

To the Senate and House of Representatives of the United States of America:

The Mount Vernon Ladies' Association of the Union desires respectfully and urgently to present to you its protest against the establishment of a criminal reformatory for the District of Columbia, on what is known as the Belvoir or White House tract of land in Virginia, in the near vicinity of the home and grave of George Washington.

The tract of land thus far chosen for the purpose is 3½ miles from Mount Vernon, and forms a part of the peninsula extending within 2½ miles from Mount Vernon, the whole of which peninsula, the association has been informed by one of the Commissioners of the District of Columbia, it is contemplated ultimately to acquire for the reformatory. The home of Nellie Custis is within about one-half mile of the Belvoir tract, while the home of George Mason is within about 1 mile or less.

The association submits that there can be neither necessity nor propriety in the location of such an institution in a setting of these historic homes, so closely associated with the independence of our country, and especially that it would be a national discredit to place a penal criminal institution in the immediate vicinity of the home and burial place of Washington. The protest of this association, with that of others, was submitted to the Commissioners of the District of Columbia with promptness when the matter was first brought to the attention of its regents, who make this earnest appeal because of their firm conviction that it will arouse the sentimental interest of every patriotic citizen of the United States, and the association embraces this early opportunity, after the reassembly of Congress, to submit the matter to its attention and to invoke its protection.

HARRIET CLAYTON COMEGYS,
Regent,
MARY T. BARNES,
Vice Regent for District of Columbia,
MARY T. LEITER,
Vice Regent for Illinois,
SARAH N. VAN RENSSELEER,
Vice Regent for West Virginia,
Special Committee of the Mount Vernon Ladies' Association of the Union.
FRANCES JOHNSON ROGERS,
Vice Regent for Maryland, Secretary of Association.

The VICE PRESIDENT. The memorial will lie on the table. The Secretary will also read the resolution submitted by the Senator from Delaware.

The resolution (S. Res. 310) was read and ordered to lie on the table, as follows:

Resolved, That the Commissioners of the District of Columbia be, and they are hereby, directed to report to the Senate as early as possible whether they have selected a tract of land to be used as a site for the construction and erection of a reformatory as authorized by the act approved March 3, 1909, entitled "An act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1910, and for other purposes;" and if a tract of land for such site has been selected, to report to the Senate the location thereof, giving its approximate distance from the home and grave of George Washington, and also to report to the Senate the reasons for such selection.

PETITIONS AND MEMORIALS.

Mr. WARREN presented a memorial of the Wyoming State Board of Sheep Commissioners, remonstrating against any change being made in the law which gives to Congress alone the right to create forest reserves in Wyoming and other Western States, which was referred to the Committee on Forest Reservations and the Protection of Game.

Mr. GAMBLE presented a petition of Local Lodge No. 521, Modern Brotherhood of America, of Blunt, S. Dak., and a petition of Columbia Lodge, No. 544, Modern Brotherhood of America, of Pierre, S. Dak., praying for the enactment of legislation providing for the admission of publications of fraternal societies to the mail as second-class matter, which were referred to the Committee on Post Offices and Post Roads.

Mr. NIXON presented a petition of the constitutional convention of Arizona, praying that San Francisco, Cal., be selected as the site for holding the proposed Panama Canal Exposition, which was referred to the Committee on Industrial Expositions.

Mr. SHIVELY presented a petition of Logansport Post, No. 14, Department of Indiana, Grand Army of the Republic, and a petition of sundry survivors of the Seventy-third Regiment of Indiana Volunteer Infantry, praying for the passage of the so-called per diem pension bill, which were referred to the Committee on Pensions.

Mr. CULLOM presented a petition of Prosperity Lodge, No. 1754, Modern Brotherhood of America, of Rock Island, Ill., praying for the enactment of legislation providing for the admission of publications of fraternal societies to the mail as second-class matter, which was referred to the Committee on Post Offices and Post Roads.

Mr. PERKINS presented a petition of the Chamber of Commerce of Oakland, Cal., praying for the establishment of a supplemental naval station at the Mare Island Navy Yard, Cal., which was referred to the Committee on Naval Affairs.

He also presented a memorial of the E. J. Chubbuck Co., of San Francisco, Cal., remonstrating against the enactment of legislation to prohibit the printing of certain matter on stamped envelopes, which was referred to the Committee on Post Offices and Post Roads.

He also presented a petition of sundry citizens of San Francisco, Cal., praying that an appropriation be made for the improvement of the harbor at Oakland, Cal., which was referred to the Committee on Commerce.

Mr. NELSON presented a petition of the Retail Grocers' Association of Duluth, Minn., praying for the repeal of the present oleomargarine law, which was referred to the Committee on Agriculture and Forestry.

He also presented a memorial of the Minnesota Canners' Association, remonstrating against the enactment of legislation requiring the date to be placed on canned vegetables or fruits, which was referred to the Committee on Manufactures.

He also presented petitions of Good Faith Lodge, No. 601, of Red Lake Falls; of Golden Ben Lodge, No. 2351, of Averill; of Easter Lodge, No. 377, of South Stillwater; of Local Lodge No. 2004, of Lakeville; of Fishtrap Lodge, No. 1666, of Philbrook; of Local Lodge No. 818, of Afton; and of Elmwood Lodge, No. 658, of Sabin, all of the Modern Brotherhood of America, in the State of Minnesota, praying for the enactment of legislation providing for the admission of publications of fraternal societies to the mail as second-class matter, which were referred to the Committee on Post Offices and Post Roads.

Mr. FLETCHER presented petitions of Local Camps No. 45, of Palmetto; No. 5, of Gainesville; No. 335, of Genoa; No. 150, of Stuart; No. 102, of Bethel; and No. 218, of Oviedo, all of the Woodmen of the World, in the State of Florida, praying for the enactment of legislation providing for the admission of publications of fraternal societies to the mail as second-class matter, which were referred to the Committee on Post Offices and Post Roads.

Mr. YOUNG presented petitions of sundry employees of the Chicago Great Western Railway in the State of Iowa, praying for the enactment of legislation authorizing higher rates of transportation for railroads, which were referred to the Committee on Interstate Commerce.

He also presented a memorial of the Retail Grocers' Association of Cedar Rapids, Iowa, remonstrating against the repeal of the present oleomargarine law, which was referred to the Committee on Agriculture and Forestry.

He also presented a petition of the La Coterie Club, of Alta, Iowa, praying that an investigation be made into the condition of dairy products for the prevention and spread of tuberculosis, which was referred to the Committee on Agriculture and Forestry.

He also presented a memorial of Lederer, Strauss & Co., of Des Moines, Iowa, remonstrating against the passage of the so-called parcels-post bill, which was referred to the Committee on Post Offices and Post Roads.

He also presented memorials of Local Lodge No. 328, Loyal Order of Moose, of Waterloo; of Black Hawk Lodge, No. 72, Independent Order of Odd Fellows, of Waterloo; of the Commercial Association of Ottumwa; and of sundry citizens of Stuart, all in the State of Iowa, remonstrating against the enactment of legislation to prohibit the printing of certain matter on stamped envelopes, which were referred to the Committee on Post Offices and Post Roads.

He also presented petitions of Local Lodges No. 245, of Nashua; No. 332, of Fort Dodge; No. 196, of Cedar Rapids; No. 284, of Guttenberg; No. 996, of Lake Park; No. 172, of Greeley; No. 568, of Buffalo; No. 1278, of Lorimor; No. 239, of Lansing; No. 148, of Atlantic; No. 104, of Bloomfield; No. 51, of Toddville; No. 1061, of Owasa; No. 216, of Hopkinton; No. 1115, of Waterloo; No. 118, of Montpelier; No. 339, of Merrill; No. 244, of Belle Plaine; No. 681, of Jesup; No. 143, of Muscatine; No. 90, of Wapello; No. 303, of Cresco; No. 1, of Tipton; No. 10, of Independence; No. 142, of Farmersburg; No. 160, of Lone Tree; No. 32, of Council Bluffs; No. 102, of Fairview; and No. 190, of Sweetland, all of the Modern Brotherhood of America, and of Oak Camp, No. 157, Woodmen of the World, of Sac City, all in the State of Iowa, praying for the enactment of legislation providing for the admission of publications of fraternal societies to the mails as second-class matter, which were referred to the Committee on Post Offices and Post Roads.

Mr. KEAN presented an affidavit in support of the bill (S. 9437) to provide American registry for the steam yacht *Diana*, which was referred to the Committee on Commerce.

CLAIMS OF CHOCTAW AND CHICKASAW INDIANS.

Mr. OWEN. I present a memorial relating to the claims of the Choctaw and Chickasaw Indians of Oklahoma, which I ask be printed as a Senate document (S. Doc. No. 707) and referred to the Committee on Indian Affairs. When the order is reached I shall introduce a bill on the subject.

The VICE PRESIDENT. Without objection, the order will be entered as requested.

REPORTS OF COMMITTEES.

Mr. CLAPP. I am directed by the Committee on Indian Affairs, to which was referred the bill (H. R. 28406) making appropriations for the current and contingent expenses of the Bureau of Indian Affairs, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June 30, 1912, to report it favorably with sundry amendments.

Within a day or two I will submit a report to accompany the bill. I shall not call up the bill for consideration until after the holiday recess.

The VICE PRESIDENT. The bill will be placed on the calendar.

Mr. PENROSE, from the Committee on Post Offices and Post Roads, to which was referred the bill (S. 9556) to provide for the extension of the post office and court house building at Dallas, Tex., and for other purposes, asked to be discharged from its further consideration, and that it be referred to the Committee on Public Buildings and Grounds, which was agreed to.

Mr. CUMMINS. I ask that Order of Business No. 838, being Senate bill (S. 6702) to promote the safety of emyloyees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their locomotives with safe and suitable boilers and appurtenances thereto, be recommitted to the Committee on Interstate Commerce.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. CUMMINS. I am directed by the Committee on Interstate Commerce, to which was referred the bill (S. 6702) to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their locomotives with safe and suitable boilers and appurtenances thereto to report it with an amendment. I ask that the bill retain its original place on the calendar.

The VICE PRESIDENT. Without objection, that order will be made.

CIVIL GOVERNMENT FOR PORTO RICO.

Mr. DEPEW. I ask that the bill (H. R. 23000) to provide a civil government for Porto Rico, and for other purposes, be recommitted to the Committee on Pacific Islands and Porto Rico for hearing, retaining its place on the calendar.

The VICE PRESIDENT. Is there objection to the entry of the order requested by the Senator from New York? The Chair hears none, and it is so ordered.

PARK ROAD, DISTRICT OF COLUMBIA.

Mr. GALLINGER. I am directed by the Committee on the District of Columbia, to which was referred the bill (H. R. 21331) for the purchase of land for widening Park Road, in the District of Columbia, to report it favorably without amendment, and I submit a report (No. 929) thereon. This is a brief bill, and there is some urgent reason for its enactment. I ask for its present consideration.

The VICE PRESIDENT. The bill will be read for the information of the Senate.

The Secretary read the bill, and there being no objection, the Senate, as in Committee of the Whole, proceeded to its consideration. It authorizes the Commissioners of the District of Columbia to purchase, for widening Park Road, the triangular lot designated as Lot A, in Chapin Brown's subdivision of parts of Mount Pleasant and Pleasant Plains, called "Ingleside," as recorded in liber county No. 8, folio 37, of the records of the office of the surveyor of the District of Columbia, at a price deemed by them to be reasonable, not exceeding the sum of $3,600, payable one half from the revenues of the District of Columbia and the other half out of any moneys in the United States Treasury not otherwise appropriated.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

Mr. GALLINGER. From the same committee I submit an adverse report (No. 930) on the bill (S. 8349) for the purchase of land for widening Park Road, in the District of Columbia, and, as the bill relates to the same subject, I move its indefinite postponement.

The motion was agreed to.

HEIGHT OF BUILDINGS.

Mr. GALLINGER. From the Committee on the District of Columbia, I report back favorably without amendment the bill (S. 9439) to amend the act regulating the height of buildings in the District of Columbia, approved June 1, 1910, and I submit a report (No. 931) thereon.

Mr. CARTER. That is a bill of local importance. I ask unanimous consent for its present consideration.

The Secretary read the bill; and there being no objection, the Senate, as in Committee of the Whole, proceeded to its consideration. It proposes to amend the act entitled "An act to regulate the height of buildings in the District of Columbia," approved June 1, 1910, by adding at the end of the third paragraph of section 5 of the act the following proviso:

Provided, That any church the construction of which had been undertaken but not completed prior to the passage of this act shall be exempted from the limitations of this paragraph, and the Commissioners of the District of Columbia shall cause to be issued a permit for the construction of any such church to a height of 95 feet above the level of the adjacent curb.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

MONUMENT TO GEN. WILLIAM CAMPBELL.

Mr. SWANSON. I am directed by the Committee on the Library to report back favorably without amendment the bill (S. 2517) for the erection of a monument to the memory of Gen. William Campbell, and I submit a report (No. 932) thereon.

Mr. MARTIN. I ask unanimous consent for the present consideration of the bill just reported by my colleague.

The VICE PRESIDENT. The Secretary will read the bill, if there be no objection.

The Secretary read the bill.

Mr. KEAN. I have no objection to the bill, but I think there is a good deal of preamble and so on in it that ought to be stricken out.

Mr. MARTIN. It is in the precise phraseology of a bill which heretofore passed the Senate. Some of the language might be dispensed with, but I hope the Senator will not object.

Mr. KEAN. No; I merely object to the form.

There being no objection, the bill was considered as in Committee of the Whole. It appropriates $25,000 for the erection of a statue to the memory of Gen. William Campbell and comrades in the town of Abingdon, Va.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

BILLS INTRODUCED.

Bills were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. LA FOLLETTE:

A bill (S. 9607) to authorize the cutting of dead and down timber upon the Menominee Indian Reservation and the manufacture of same into lumber; to the Committee on Indian Affairs.

A bill (S. 9608) granting an increase of pension to Mary J. De Moe (with accompanying papers); to the Committee on Pensions.

By Mr. YOUNG:

A bill (S. 9609) granting an increase of pension to Eli Adams;

A bill (S. 9610) granting a pension to Jessie F. Loughridge;

A bill (S. 9611) granting an increase of pension to Thomas C. Curry;

A bill (S. 9612) granting an increase of pension to Benjamin F. Fulton;

A bill (S. 9613) granting an increase of pension to John Fair; and

A bill (S. 9614) granting an increase of pension to Bernard Harmon; to the Committee on Pensions.

By Mr. CULBERSON:

A bill (S. 9615) for the relief of the estate of Dr. Samuel Jack, deceased (with an accompanying paper); to the Committee on Claims.

By Mr. CUMMINS:

A bill (S. 9616) granting an increase of pension to David Ball;

A bill (S. 9617) granting an increase of pension to William Rider;

A bill (S. 9618) granting a pension to Thomas W. Boyer;

A bill (S. 9619) granting an increase of pension to Crawford S. Barclay;

A bill (S. 9620) granting an increase of pension to William R. Keyte;

A bill (S. 9621) granting an increase of pension to Enos Wright;

A bill (S. 9622) granting an increase of pension to Leander Eddy; and

A bill (S. 9623) granting an increase of pension to Joseph F. Cassner; to the Committee on Pensions.

By Mr. CULLOM:

A bill (S. 9624) granting an increase of pension to William H. Burgett (with accompanying papers); to the Committee on Pensions.

By Mr. FRYE:

A bill (S. 9625) granting an increase of pension to Charles L. Burgess (with accompanying papers); and

A bill (S. 9626) granting an increase of pension to Susan Hanson (with accompanying papers); to the Committee on Pensions.

By Mr. PENROSE:

A bill (S. 9627) granting an honorable discharge to Dennis O'Brien; to the Committee on Naval Affairs.

A bill (S. 9628) granting an increase of pension to Frederick Shulley;

A bill (S. 9629) granting an increase of pension to Thomas T. Paxton; and

A bill (S. 9630) granting an increase of pension to George Showers (with accompanying papers); to the Committee on Pensions.

By Mr. GAMBLE:

A bill (S. 9631) granting an increase of pension to David Stanard (with accompanying papers); to the Committee on Pensions.

By Mr. NELSON:

A bill (S. 9632) granting an increase of pension to William H. Blaker (with accompanying papers); to the Committee on Pensions.

By Mr. PERKINS:

A bill (S. 9633) for the relief of Norton P. Chipman; to the Committee on Public Lands.

A bill (S. 9634) granting an increase of pension to Frank E. Conkling (with accompanying papers); and

A bill (S. 9635) granting a pension to Emma M. Heines (with accompanying papers); to the Committee on Pensions.

By Mr. CLARK of Wyoming:

A bill (S. 9636) granting an increase of pension to Herman Mewis; to the Committee on Pensions.

By Mr. OWEN:

A bill (S. 9637) making appropriation to pay certain Indian claims investigated, found due, and reported to the Department of the Interior; to the Committee on Indian Affairs.

By Mr. BRADLEY:

A bill (S. 9638) granting an increase of pension to William R. Jones; to the Committee on Pensions.

By Mr. SCOTT:

A bill (S. 9639) granting an increase of pension to Danial Wylie (with accompanying papers); to the Committee on Pensions.

By Mr. CRANE:

A bill (S. 9640) granting an increase of pension to David Wilson; to the Committee on Pensions.

By Mr. DICK:

A bill (S. 9641) for the relief of Robert J. Scott; to the Committee on Military Affairs.

A bill (S. 9642) for the relief of the estate of John Frazer, deceased;

A bill (S. 9643) for the relief of the estate of Zephaniah Kingsley, deceased; and

A bill (S. 9644) for the relief of the African Methodist Episcopal Church, of Gallipolis, Ohio; to the Committee on Claims.

A bill (S. 9645) granting an increase of pension to Lewis H. Williams;

A bill (S. 9646) granting an increase of pension to Nelson C. Lawrence;

A bill (S. 9647) granting an increase of pension to Daniel W. Beach;

A bill (S. 9648) granting an increase of pension to David R. Brown;

A bill (S. 9649) granting an increase of pension to Henry C. Osborne;

A bill (S. 9650) granting an increase of pension to John Long;

A bill (S. 9651) granting an increase of pension to William H. H. Minturn; and

A bill (S. 9652) granting a pension to Mary E. Faulder; to the Committee on Pensions.

By Mr. SMITH of Michigan:

A bill (S. 9653) granting an increase of pension to James O. Palmer (with accompanying papers); to the Committee on Pensions.

By Mr. CRANE:

A bill (S. 9654) for the relief of Henry Edwards; to the Committee on Military Affairs.

By Mr. CURTIS:

(By request.) A bill (S. 9655) providing for the retirement of certain employees of the Government, and for other purposes; to the Committee on Civil Service and Retrenchment.

A bill (S. 9656) granting a pension to Andrew P. Duff (with accompanying papers); to the Committee on Pensions.

AMENDMENTS TO APPROPRIATION BILLS.

Mr. WARNER submitted an amendment proposing to appropriate $500,000 for improving the Missouri River with a view to securing a permanent 6-foot channel between Kansas City and the mouth of the river, intended to be proposed by him to the river and harbor appropriation bill, which was referred to the Committee on Commerce and ordered to be printed.

Mr. MONEY submitted an amendment proposing to appropriate $60,000 for repairing and refitting the United States dredge *Barnard* for service at the harbor of Gulfport, Miss., etc., intended to be proposed by him to the river and harbor appropriation bill, which was ordered to be printed, and, with the accompanying papers, referred to the Committee on Commerce.

Mr. OWEN submitted an amendment providing that the funds arising from the sales of unallotted lands and other property belonging to the Choctaw, Chickasaw, Cherokee, Creek, and Seminole Tribes of Indians shall be deposited by the Secretary of the Interior in convenient national banks of the State of Oklahoma, etc., intended to be proposed by him to the Indian appropriation bill, which was referred to the Committee on Indian Affairs and ordered to be printed.

Mr. FOSTER submitted an amendment proposing to appropriate $75,000 for the construction of a lock and dam in the Mermantau River at the lower end of Grand Lake, La., etc., intended to be proposed by him to the river and harbor appropriation bill, which was referred to the Committee on Commerce and ordered to be printed.

Mr. DICK submitted an amendment proposing to appropriate $8,258.60 to pay William H. H. Hart for the care and maintenance of wards of the United States Government in the District of Columbia, etc., intended to be proposed by him to the urgent deficiency appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

HEARING BEFORE COMMITTEE ON PRIVILEGES AND ELECTIONS.

Mr. BURROWS submitted the following resolution (S. Res. 309), which was referred to the Committee to Audit and Control the Contingent Expenses of the Senate:

Resolved, That the Committee on Privileges and Elections be, and is hereby, authorized to employ a stenographer from time to time, as may be necessary, to report such hearings as may be had on bills or other matters pending before said committee during the Sixty-first Congress, and to have the same printed for its use; and that such stenographer be paid out of the contingent fund of the Senate.

IMPORTATION OF STILL WINES INTO THE PHILIPPINES.

The VICE PRESIDENT laid before the Senate the following message from the President of the United States (S. Doc. No. 709), which was read and, with the accompanying papers, referred to the Committee on Finance and ordered to be printed:

To the Congress of the United States:

I transmit herewith for the consideration of Congress a report made by the Secretary of State, in which he presents a request made by the Spanish Chamber of Commerce of the Philippine Islands, through the royal Spanish legation at Washington, for a change of the maximum percentage of alcohol, fixed in paragraphs 262 and 263 of the Philippine tariff act (Stat. L., vol. 36, p. 164), for still wines at 14° to 15° in place of the fixed rate of 14°.

The suggestion of the Spanish Chamber of Commerce is approved by the War Department and the government of the Philippine Islands, and would seem reasonable. I therefore recommend it favorably to the consideration of Congress.

WM. H. TAFT.

THE WHITE HOUSE, *December 16, 1910.*

(Inclosures: Report of the Secretary of State, December 12, 1910, with inclosures.)

OMNIBUS CLAIMS BILL.

Mr. BURNHAM. I ask the Senate now to take up for further consideration Senate bill 7971.

There being no objection, the Senate, as in Committee of the Whole, resumed the consideration of the bill (S. 7971) for the allowance of certain claims reported by the Court of Claims, and for other purposes.

[Mr. BRISTOW resumed and concluded the speech begun by him on Wednesday last. The entire speech is printed below.]

Wednesday, December 14, 1910.

Mr. BRISTOW. Mr. President, I know not whether I can accomplish what ought to be accomplished by the remarks I expect to make upon this bill. It ought to be defeated. It ought not to pass. There are doubtless some claims that are meritorious, but, like all omnibus claims bills, it carries with it a great many claims that are not meritorious and that could not pass the Senate or the House upon their merits.

Personally, I do not believe that omnibus claims bills ought to be passed. I think every claim ought to stand upon its own merits, and not be carried through by the organization of a bill in such a way as to induce Senators to vote for many items that they would oppose if it were not for the defeat of items in which they are interested.

A careful perusal of the bill and the report of the committee shows that this is no exception to the ordinary omnibus claims bill. The Senate has declined to incorporate in this bill a number of amendments that are just as meritorious as those that are in the bill. The committee has refused to incorporate in it many claims that are admitted to be just as valid as those that are incorporated in it. The reason for declining to place in the bill the claims that are admitted to be as valid as those the bill contains has been suggested by the Senator from West Virginia [Mr. SCOTT]; that is, it would endanger the passage of the bill.

Therefore this bill is organized in this way: First, for the purpose of getting support, in order to get an omnibus claims bill through, by incorporating in it a number of claims properly scattered throughout the Union; and then the committee proposes to keep out other claims just as meritorious and just as good as those that it is passing, fearing that the bill may become too large and therefore be defeated.

The truth is that this bill is organized to pass one set of claims, and that is the French spoliation claims, and it is intended to get enough support on the minority side of the Chamber to get those claims through by incorporating a number of war claims. If the French spoliation claims were taken out, the bill would not pass. If the war claims were not there, the spoliation claims would not pass. These claims are not to be settled upon their merits. This bill is not organized upon merit, but to get enough votes to pass the measure and carry with it $840,000 of French spoliation claims, which, in my judgment, is not justified.

I know that many distinguished men have advocated the passage of the spoliation claims. One section of our country has pressed the consideration of these claims for a hundred years with very little success until recent times, when age had dimmed their merits and permitted interested parties, through a series of decades, to build up cases that appealed to the consideration of men who were far removed from the events that resulted in the creation of the claims.

There are a good many things about these spoliation claims that I desire to call to the attention of the Senate when the Senate is present. So I shall proceed with some deliberation until the lunch hour is over. I also have some records which I wish to read.

But I want to say, first, that if these spoliation claims on principle were just and valid claims against the Government, still this bill ought to be defeated, or ought to be referred back to the committee because the claims as they are in this bill, aside from the merits of the general proposition that the French spoliation claims are valid claims, ought not to be approved.

Mr. BORAH. Mr. President——

The PRESIDING OFFICER (Mr. YOUNG in the chair). Does the Senator from Kansas yield to the Senator from Idaho?

Mr. BRISTOW. I do.

Mr. BORAH. I suggest the absence of a quorum.

The PRESIDING OFFICER. The Senator from Idaho suggests the absence of a quorum. The Secretary will call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Bacon	Chamberlain	Johnston	Shively
Bankhead	Clark, Wyo.	Jones	Simmons
Borah	Clarke, Ark.	Kean	Smoot
Bourne	Crane	McCumber	Stephenson
Bradley	Crawford	Martin	Sutherland
Brandegee	Culberson	Money	Swanson
Briggs	Cummins	Nelson	Taliaferro
Bristow	Dillingham	Nixon	Taylor
Brown	Flint	Overman	Warner
Burkett	Frazier	Page	Warren
Burnham	Gallinger	Paynter	Wetmore
Burrows	Gamble	Perkins	Young
Burton	Gore	Piles	
Carter	Guggenheim	Rayner	

The PRESIDING OFFICER. Fifty-four Senators have answered to their names. A quorum of the Senate is present.

Mr. BRISTOW. I had just remarked before the interruption that if these French spoliation claims were just and valid claims, this bill ought to be referred back to the committee and a number of items should be cut out.

I should like to ask the chairman of the committee or any other Senator if he thinks the claim to which I now refer is a just one. I refer to a claim for the capture of the brig. *William*, the report on which is found on page 646 of this voluminous volume.

The brig *William* sailed on a commercial voyage from Kingston, Jamaica, about the 11th day of October, 1798, bound for Norfolk, Va., loaded with sugar. It was captured by a French privateer.

Mr. BURNHAM. Will the Senator tell us the name of the brig to which he refers?

Mr. BRISTOW. It is the brig *William*.

Mr. BURNHAM. And the master's name?

Mr. BRISTOW. The master was David Smith, who put in a claim as follows: Value of vessel, $4,000; freight earnings, $429; value of his portion of the cargo, $1,340; premiums of insurance paid, $929.66.

He claims the value of the ship, the value of the cargo, the freight that that ship would have earned if it had completed the voyage, and the premium he paid for the insurance of the ship and the cargo on the trip. The ship was captured and the underwriter paid the insurance, aggregating $3,355.

This bill proposes, first, to pay for the ship; second, to pay the freight that it would have earned if it had completed the voyage; third, to reimburse the owner for his insurance premium; and, fourth, to reimburse the insurance company that paid for the loss, or, the underwriter, I should say, as it was an individual, not a corporation.

I wish to inquire why the insurance premium should be paid. I should like to ask some member of the committee who is in favor of this bill why the insurance premium should be paid. The rate of insurance was 33⅓ per cent. The man who insured the ship charged therefor a third of its value, because there was a great risk. He knew there was a state of war out on the sea, and when the owner undertook to insure his vessel he was charged this exorbitant rate. Hundreds of these vessels

were not captured. The insurer fixed his insurance premium according to the risk he was assuming, which was very great, of course. He paid the loss when loss occurred and made great profit when loss did not occur. Now it is proposed to reimburse him for all his losses and let him keep the premiums besides.

If there is anything that can be said to justify that payment, I would like to hear it. I should like to know why you pay the freight that that vessel would earn when it starts out on a voyage and is captured when it has barely started on the trip. It starts out on a voyage that might require three months to complete, yet you can go through the list of these claims and you will find that freight on these voyages is to be paid even if the vessel had been out only 10 days.

The PRESIDING OFFICER. Will the Senator from Kansas suspend while the Chair lays before the Senate the unfinished business? It will be stated.

The SECRETARY. A bill (S. 6708) to amend the act of March 3, 1891, entitled "An act to provide for ocean mail service between the United States and foreign ports and to promote commerce."

Mr. GALLINGER. I ask unanimous consent that the unfinished business be temporarily laid aside.

The PRESIDING OFFICER. The Senator from New Hampshire asks unanimous consent that the unfinished business be temporarily laid aside. Is there objection? The Chair hears none; and it is so ordered. The Senator from Kansas will proceed.

Mr. BRISTOW. If an insurance company should insure a house for five years, it receives a certain premium for assuming that risk for that time. We will say the house burns in six months. It is just as reasonable to require that insurance company to pay the rent that property would have earned until the policy expired as it is for the United States Government to make good the freight this vessel would have earned if the voyage had been made. Still that is what this bill proposes to do.

I would be glad to have somebody, if there is any member of the committee who wants to justify a proceeding like that, give the reasons for it.

Mr. BURNHAM. Mr. President, I desire to answer in part the inquiry of the Senator from Kansas. The suggestion is made that in this particular claim the value of the vessel is paid for and also that the premium on insurance is paid. Not only would the owner of the vessel lose the vessel captured, but he would lose the premium he had paid for insurance. I think the rate of insurance was reasonable, taking into account the ship itself. It appears that the ship was 110$\frac{27}{95}$ tons. Being a very small ship and going, perhaps, for a long voyage, the insurance, of course, was pretty high. On those small ships subjected to that hazard the insurance should be more than in an ordinary case. I think that is an explanation of that point.

Mr. BRISTOW. Suppose the ship had not been captured, who would reimburse the insured for the expense of his premium?

Mr. BURNHAM. If the ship had not been captured, there would not have been any trouble about it.

Mr. BRISTOW. The owner would have been out $900 for his insurance.

Mr. BURNHAM. There could not have been any claim here if it had not been captured. Now, I want to say just a word in regard to freight earnings——

Mr. PAYNTER. Mr. President——

The PRESIDING OFFICER. Does the Senator from Kansas yield to the Senator from Kentucky?

Mr. BRISTOW. Certainly.

Mr. PAYNTER. If the Senator will explain the principle upon which the Government is liable at all, it may answer the question of the Senator from Kansas.

Mr. BURNHAM. This question of French spoliation involves a great deal of discussion and at very great length. I do not propose at this time to enter upon a prolonged discussion of the history and the foundation of these claims and the action of the Government from the time of their origin down to the present time. There is a great deal involved in these matters, but in regard to this particular claim——

Mr. GALLINGER. I will ask my colleague if every one of these claims does not involve the honor of the Government of the United States?

Mr. BURNHAM. Mr. President, it seems to me there can be but one answer to that question. For these many years the most sacred obligations of this Government have been denied. I do not think there is in this whole bill a claim that begins to approach in the character and in the duty of payment the French spoliation claims. Before the debate closes I may want to say something further on the subject of these claims.

Inquiry has been made in regard to the freight item. The simple fact in regard to the freight earnings and payment of them is that by commercial custom, by every treaty this country has had with any other Government, where the matter of vessels and freight has been involved, it has been the unvarying custom to allow the freight, and that is what is allowed here. It was allowed in the treaty with Spain, it was allowed in the second treaty with France, and it has been the constant custom of the Government.

Mr. LODGE. If the Senator will allow me on that point——

The PRESIDING OFFICER. Does the Senator from Kansas yield to the Senator from Massachusetts?

Mr. BRISTOW. Certainly.

Mr. LODGE. It was held by the Court of Claims in the case of the schooner *John* that—

> Freight earned is an element of value in property loss; full freight may be often recoverable although the vessel may not reach her destination; but in these cases the court adopts the general rules of commercial usage, two-thirds of the full freight as the measure of damages.

There is also the decision of Judge Story, who laid down the rule in regard to the cases under the treaty of 1831 with France, which was the Napoleonic seizure, in which he says:

> In an unfortunate case like the present, the court would certainly be disposed to give the captor all possible relief. I need not add that no relief is possible which can not be given consistently with the justice due the claimants. The demand of freight is, I apprehend, an absolute demand, in cases where the ship is pronounced to be innocently employed. * * * The freight is as much a part of the loss as the ship, for he (the captor) was bound to answer equally for both. The captor has, by taking possession of the whole cargo, deprived the claimant of the fund to which his security was fixed. He was bound to bring in that cargo subject to the demand for freight. He was just as answerable for the freight of the voyage as for the ship which was to earn it, or which was rather to be considered as having already earned it.
>
> In the room of this fund the captor has substituted his own personal responsibility for loss accrues by the fault of his agent. I see no distinction under which I can pronounce that the claimant is not as much entitled to the freight as to the vessel.

That is the decision of the Supreme Court, rendered by Judge Story.

Mr. BRISTOW. I should like to inquire again why the owner of that vessel should be reimbursed for the insurance premium. The senior Senator from New Hampshire, as well as the junior Senator, in referring to the character of these claims declared that the honor of the Government was at stake. As to whether or not these are valid claims I expect to offer some brief remarks later on, but even if these claims are valid, which I do not agree to, why should these people be reimbursed for the premiums they paid on insurance?

Mr. LODGE. Mr. President——

The PRESIDING OFFICER. Does the Senator from Kansas yield further to the Senator from Massachusetts?

Mr. BRISTOW. Certainly.

Mr. LODGE. I suppose they are paid because it is a part of the war premium which they had to pay on their ships. In the case of the *Alabama* claims all the war premiums were returned from the award to our claimants. They were returned by act of Congress. The original claims not having taken the whole of the award, all the war premiums were paid under the *Alabama* claims.

Mr. BRISTOW. If this ship had not been lost the owner could not have recovered the premium. If I understand the principle of insurance, it is that the insurer of the vessel or the property agrees to restore the property or its value. This insurance premium was an expense incident to the business. It seems to me that on principle the Government is no more obliged to return to him that premium than it was the dockage at the port from which it sailed. That is an expense incident to its business. It certainly could not be expected to make this claimant better than if his vessel had not been captured or the property had not been lost. If the capture had not resulted the insurance premium would not have been restored, any more than any other expenses incident to the voyage; not any more than the wages of the seamen.

Mr. CRAWFORD. Will the Senator from Kansas permit me a question there?

Mr. BRISTOW. Certainly.

Mr. CRAWFORD. I make no pretensions to having made an exhaustive examination of these claims, but as I understand it the basis of the claims is the liability originally on the part of the French Government to pay American citizens for losses caused by French privateers preying upon American shipping. Now, does the Senator mean to say that there is no principle of international law, and that there is no precedent in the adjustment of cases of this character where the Government guilty of spoliation has not in making settlement recouped to the parties who have lost what they had paid in the form of insurance and

what they would have made in the way of profit as freight? Does the Senator state it as a proposition of custom and international law in the settlement of similar claims that no allowance is ever made for insurance on freight?

Mr. BRISTOW. I know little about international law and little about precedents, but there are certain fundamental principles of common sense that ought to prevail in legislative matters.

Mr. CRAWFORD. If the Senator will pardon me right there——

Mr. BRISTOW. The Senator will permit me to complete my answer. Here is a proposition whereby the insurance company receives a very high rate for insurance because of the risk. The owner, knowing there is danger, insures his property. There is a loss. The insurer, the underwriter, pays the loss. The insured receives the protection he asked for and paid for, and now he wants the Government, which he claims was responsible for this loss by its neglect, I suppose, not only to make good his loss, but the incidental expenses pertaining to the voyage.

Mr. CRAWFORD. If the Senator will permit me here——

The PRESIDING OFFICER. Does the Senator from Kansas yield further to the Senator from South Dakota?

Mr. BRISTOW. Certainly.

Mr. CRAWFORD. It seems to me the question here is simply this: Was France originally liable to the owners of these vessels and these goods, under international rules and precedent, to reimburse them for their insurance and freight? If so, the United States stepped into the shoes of France when it used these claims to offset the claims of France and thereby assumed these claims toward the citizens of the United States.

Mr. BRISTOW. That is not the question.

Mr. CRAWFORD. If the Senator will permit me to finish. If the United States so assumed these claims and if France, under the rule of precedent and international law, was liable to pay the insurance and the freight, then why are these not items for which the United States should reimburse these people?

Mr. BRISTOW. The Senator, of course, is assuming that the Government is responsible, and I do not concede that. I think I will submit evidence by and by which is conclusive that it is not. But suppose it were. Has the Senator any evidence, or does he contend that this insurance premium ought to be returned? Why should it? It would not have been returned if the voyage had been completed and there had been no loss. Does the Senator propose to make the man good for expenses that he could not possibly have recovered? If he is paid the freight for the voyage, that certainly should not only cover the expenses attending the voyage, but also yield a profit. Why, then, should one of the expenses—that is, the insurance—be reimbursed?

Mr. CRAWFORD. There might be a sense in which premium paid for insurance is an element of value in the property after it has been invested in the property. But that is not the point, in my mind. The point is here. We settled with Great Britain. We received $10,000,000. We settled with Denmark; we settled with Spain; we settled with half a dozen other countries for losses sustained in the same manner and during the same period. I assume our Court of Claims has simply found a liability here that is identical with the liability those other nations discharged when they made payment. But France did not make payment, because it was offset by a claim she had against the United States, and the United States assumed it. Now, if they assumed it, they assumed it under international law and precedent, and my question is, Why did not the insurance and freight go as a part of the obligation?

Mr. BRISTOW. I want to state here, rather than permit the assumption to go unchallenged, that the United States Government never assumed these claims. France never admitted that they were valid claims. None of this money ought to be paid. This man has no claim, in my judgment, against the United States; but even if he did have a valid claim for the value of his property, he has not any claim for more than his property was worth.

Mr. PAYNTER. Mr. President——

The PRESIDING OFFICER. Does the Senator from Kansas yield to the Senator from Kentucky?

Mr. BRISTOW. Certainly.

Mr. PAYNTER. I understood the Senator to say that France did not admit liability for these claims.

Mr. BRISTOW. I shall undertake by and by to show that she did not.

Mr. PAYNTER. If France did admit the liability, and this Government used them for the purpose of discharging its own obligation, should they not be made a part of this bill?

Mr. BRISTOW. I think I will be able to convince the Senator from high authority that France never admitted any such thing, and that this Government never assumed any liability. But suppose she had, this Government did not agree to make that man good for anything more than his loss, and here this bill proposes to pay him $929 more than the value of his ship and its cargo, and it proposes to pay him for the freight it would have earned if the voyage had been completed.

It is not simply this claim, but that practice runs through the entire bill. I want to appeal to the common-sense method of dealing with ordinary business affairs in the consideration of this measure. If the Senate takes the view that these are valid claims it certainly can not contend that the owners of these vessels are entitled to more money than they were worth at the time they were captured; and if you pay the freight, as the Senator from Massachusetts [Mr. LODGE] insists the freight must be paid, then the expenses incident to that voyage should be cut out, and the insurance premium on the vessel and the cargo should not be allowed.

Mr. PAYNTER. Mr. President, I should like to be permitted to make a suggestion or thought to the Senator from Kansas. I do not suggest it as being my view at all, but as one worthy of consideration. Assume that goods were shipped from the port of New York on one of these vessels. Prudence requires the owner to have insurance. It cost money to carry them to the point where they were captured. Now, presumably, the value of the goods that were captured was not only the original cost when they started upon the voyage, but added to that the cost of carriage, which would include the insurance. Would not that be an element entering into the determination of the question as to the value of the goods? If you value the goods independently and the cost of carriage, then you get the sum total.

Mr. BRISTOW. Why should you not include the wages of the seamen?

Mr. PAYNTER. That would be in the cost of the carriage of the freight.

Mr. BRISTOW. Is not the insurance premium a cost incidental to the trip? All those expenses are made up by the freight charge. That is the compensation for the voyage.

There is another element of injustice in this that I want to call to the attention of the Senate. The underwriters, partnerships and individual underwriters, are paid by the bill. Incorporated insurance companies are not paid. If a company does business under a partnership, the loss which the company pays is to be reimbursed. If the insurer was an individual underwriter, he also is reimbursed. If it is a corporation, the insurance company is not reimbursed. That is the plan which has been followed in preparing this bill.

In this particular instance there was a very large premium—33⅓ per cent. That man was in the insurance business; he was doing business for profit. He charged 33⅓ per cent because there was a great risk. There are other claims here where the charge was only 10 per cent. I think there is one where it was only 6 per cent. There are many where it was 15, 17½, 18, 20, 25 per cent, and so forth. These underwriters charged what they thought the risk worth. They were in this precarious business and charged according to the risk. Then if a loss occurred, why should the Government make that loss good? This exorbitant amount of money which it charged for its policies was for the purpose of enabling it to meet the losses that occurred.

I do not know how it impresses other Senators, but to me it seems outrageous and indefensible. It would not be tolerated in any business adjustment anywhere.

Mr. SUTHERLAND. Mr. President——

The PRESIDING OFFICER. Does the Senator from Kansas yield to the Senator from Utah?

Mr. BRISTOW. Certainly.

Mr. SUTHERLAND. I have heard only a part of the Senator's discussion of this matter, and I want to ask him a question for information. Do I understand it is proposed to pay the value of the goods, the amount of the insurance premium, and the amount of the freight to these claimants?

Mr. BRISTOW. Yes.

Mr. SUTHERLAND. At what place is the value of the goods fixed, at the place of shipment or the place of arrival?

Mr. BRISTOW. There is nothing in the report to indicate. This claim was made for the full value in this specific instance. The value of the vessel was $4,000; freight earnings, $429; value of his portion of the cargo, $1,340; premium on insurance paid, $929.66; total, $6,698.66, less insurance received by him—that is, the insurance the underwriter paid—$3,355, leaving his net claim $3,343.66. Then the underwriter comes in for his claim for the $3,355 insurance which he paid, which is also allowed.

Mr. SUTHERLAND. I want to suggest to the Senator from Kansas that it might make some difference whether the value

of the goods was fixed at the place of shipment or the place of arrival. If the value was fixed at the place of arrival it seems to me very clear that the cost of the insurance and the cost of the freight ought not be included, because in that case the claimant would be receiving more for his goods than he would have received if he had carried them safely to the point of destination. In other words, if he carried his goods to the point of arrival he would have received a certain sum which would be the value of the goods. Now, they do not arrive, and it is proposed by this bill, if that is the point where the value is fixed, to pay him not only what he would have received for his goods, but something that he never would have received if the voyage had been successful.

Mr. BRISTOW. That is just what the bill proposes to do.

Mr. CRAWFORD. If the Senator will permit me, surely the value is fixed where the policy of insurance is written, and that is the location before shipment.

Mr. BURNHAM. Mr. President, I understand that the value of the cargo is the value at the place of shipment, the port of embarkation, of exportation, and it is not upon the theory that the goods had a profit of so much and that was added to the value, but it is the value at the place of shipment.

I wish to state another fact to the Senator. Every one of these claims has been before the Court of Claims. Every item has been carefully investigated by that court and the Government has been represented by the Attorney General and the Assistant Attorney General in every instance, as I am informed. These matters have been carefully examined. So the committee were justified, as we thought, in taking the findings of the court.

Mr. BRISTOW. There is a large number of claims, and many of them have been brought here by amendment to-day, which have been before the Court of Claims and have been passed upon exactly as these, and they are cut out of the bill.

Mr. BURNHAM. The Senator knows very well, because he has been present at the meetings of the committee and understands from the discussion, that the committee has established certain rules which bar out claims. There has been no attempt to bolster up the French spoliation claims as a part of the bill, or anything of the sort. It has been the practice to consider fairly and fully all claims that came before the committee, and we have taken the findings of the court established by the Government itself and feel justified in doing so.

Mr. BRISTOW. Claims are passed by the Court of Claims and are certified up to the Committee on Claims. Many of them are accepted and paid by that committee. Others are rejected because, in the judgment of the committee, they are not valid. The committee never proposes to allow every claim that passes through the Court of Claims. They are rejected at every session. The fact that these claims have been passed upon by the Court of Claims can not consistently be offered here as an argument why they should pass this body, because many claims which sustain exactly the same relation to the Court of Claims are denied passage by Congress, and are not reported favorably by the committee.

So you can not bring here as an argument that the Court of Claims has passed on these claims, because in that event then Congress is required to take every claim the Court of Claims passes on favorably, which would be an unheard-of proposition, as the chairman of the committee knows.

Mr. BURKETT. Mr. President——

The PRESIDING OFFICER. Does the Senator from Kansas yield to the Senator from Nebraska?

Mr. BRISTOW. I do.

Mr. BURKETT. The Senator has made a statement which it seems to me ought to be qualified. If I understand the practice of Congress correctly, I have not understood that Congress or the committees of Congress have ever sought to change amounts or to render a different decision on a case than the Court of Claims has found as to its merits. I think perhaps there have been some claims which have come back from the Court of Claims that have not been reported favorably; that is, the appropriation has not been made to pay them. But if I understand the practice—I was a member of that committee, I will say, for a couple of years—after a claim has been referred to the Court of Claims it is sent back, together with the findings rendered, and those findings have been followed in the claims bill. We have not attempted to change the amounts.

Mr. BRISTOW. The Senator from Nebraska is mistaken as to that. Amounts are frequently changed and reduced. A part is paid and a part is rejected.

Mr. BURKETT. The decree of the court is changed?

Mr. BRISTOW. Oh, yes; that has been done, I know, in a number of instances since I have been a member of the Committee on Claims.

Mr. BURKETT. Let me ask the Senator another question with reference to this point.

The PRESIDING OFFICER. Does the Senator from Kansas yield?

Mr. BRISTOW. Certainly.

Mr. BURKETT. These claims, of course, are of long standing. I gave them some consideration when I was a member of the committee, and I understand they have gone to the Court of Claims and the amount has been certified back. That amount and the rule of damages have been established, as I understand, by the Supreme Court of the United States, and the Court of Claims in making its finding has followed the opinion of the Supreme Court as to what should be the measure of damages. Am I correct in that?

Mr. BRISTOW. Mr. President, I do not know much about the decisions of the Supreme Court, I am sorry to say, for I am not a lawyer. I suppose they are all right; I take it for granted they are. But I know that in passing upon the cases that come from the Court of Claims, we may pay part of them and we may not pay any of them. We are not bound in any sense to pass a claim for the amount that the Court of Claims finds as due. That is left to the judgment of Congress. The Court of Claims does not presume to determine what amount is to be paid.

Mr. BURKETT. I will say that while I recall claims that have come back, which Congress has not seen fit to appropriate for, I do not recall any claim which the court has passed upon and set down the rule for the measure of damages where Congress has changed that measure of damages. I do not recall anything of that sort being done. There may be instances, but, as I recall, we have invariably, where the courts have laid the rule of damages, followed that rule of damages as the court laid it down. We do not always report such bills out, but we take the rule of damage and allow the measure of damages, as I remember.

Mr. OVERMAN. The Senator will recall one claim while he was a member of the committee—the Louisiana claim—where there was $300,000 ascertained to be due, and we allowed but $221,000, reducing the amount nearly $100,000.

Mr. SMOOT. Mr. President, answering the Senator from Nebraska [Mr. BURKETT] as to the measure of damages as considered by the Court of Claims, I wish to say that the measure of damages has been established by the Supreme Court.

In the *Anna Maria* (2 Wharton, 325) the court allowed—

> the value of the vessel and the prime cost of the cargo with all charges, and the premium of insurance, where it has been paid, with interest.

The Court of Claims, in passing upon these claims, have followed the rule of the Supreme Court in the award of damages. I can not say that I think the damages for the premium that has been paid for insurance should be returned to the owner of a vessel, though I must say that that is the ruling of the Supreme Court in the case just cited.

Mr. BURTON. Mr. President, will the Senator from Utah answer a question? Is it not true that the Committee on Claims in this bill, which it has reported and which is now before us, has departed from the findings of the Court of Claims in one important particular? Is it not true that insurance money paid by incorporated companies has not been included in this bill, while insurance money paid by individual underwriters is included?

Mr. SMOOT. I will state to the Senator that that is the fact. That same question has arisen many times in the past.

Mr. BURTON. Is not that a material departure from the findings of the Court of Claims?

Mr. SMOOT. It is as to the payment of the Court of Claims findings for corporation claims.

Mr. LODGE. That question of money paid by underwriters was decided by the Supreme Court.

Mr. SMOOT. That is what the Senator from Ohio says. What he asked was whether in this particular bill the insurance that was paid to corporations is not included in the bill, but that paid to private parties is included.

Mr. LODGE. Exactly; but that is under the decision of the court.

Mr. BURTON. Do I understand that the Court of Claims decided that those amounts should not be paid to incorporated companies?

Mr. SMOOT. No; I did not say that.

Mr. BURTON. On the contrary, did not the Court of Claims decide that those amounts were on the same footing with other kinds of claims?

Mr. LODGE. No. They decided in the case of individual underwriters that they should be paid.

Mr. BURTON. And against incorporated companies?

Mr. LODGE. No; I do not understand they decided anything about the corporations. I do not think that question has arisen.

Mr. BURTON. If there was a failure to decide that question——

Mr. LODGE. I am not aware that they have ever decided that question.

Mr. BURTON. Would they not be given the same standing as the individual underwriters?

Mr. LODGE. The court has decided in favor of individual underwriters.

Mr. OVERMAN. I desire to ask the Senator from Utah a question. Does the Court of Claims find anything except the amount due?

Mr. SMOOT. The Court of Claims finds in every case exactly what the amount is.

Mr. LODGE. I have here the decision of the Court of Claims, which covers some 60 pages.

Mr. BURNHAM. I am reading from the law of January 20, 1885, which authorized the sending of these spoliation claims to the Court of Claims. The third section states:

That the court shall examine and determine the validity and amount of all the claims included within the description above mentioned, together with their present ownership, etc.

So that these claims were sent to the Court of Claims expressly for the purpose of determining the amount and determining also the validity of the claims. This Government sent these parties plaintiff to that court, and we think these claims ought to be included in the bill.

Mr. BRISTOW. I should like to inquire of the Senator from New Hampshire if these claims are any more sacred than others that are rejected by the committee.

Mr. BURNHAM. I think these are the only cases where the validity and the amount of a claim have definitely been determined by the court.

Mr. BRISTOW. Claims are sent there frequently other than as spoliation claims, are reported favorably, and the committee reports them adversely. Why should the decision of the Court of Claims be used as an argument for the passing of these claims and ignored as an argument for passing others? It has been ignored here to-day. Why should the decision of the Court of Claims be used as an argument for passing these claims because the court has passed upon them, and ignored by the committee or by Congress in considering other claims upon which the same court passed in the same way?

Mr. BURNHAM. Mr. President, in answer to the Senator's question, I shall be very brief. The Senator knows that under this law of January 20, 1885, the spoliation claims, so called, were referred to the Court of Claims, and that court was to determine the validity and the amount. Under general laws, known as the Bowman and Tucker Acts, claims have been sent to the Court of Claims, not in such terms as are expressed here, but in a general way, to find the facts and to report to Congress. The committees of Congress have established certain rules in the preparation of an omnibus claims bill for the convenience of themselves and of Congress, so that within certain lines they should pass upon claims in preparing an omnibus claims bill. Of course they have rejected some and allowed others; they have acted upon their own judgment upon the findings of fact by the Court of Claims, but have taken those findings for absolute verity.

Mr. OVERMAN. May I interrupt the Senator from New Hampshire?

Mr. BURNHAM. Certainly.

Mr. OVERMAN. I have one of these cases, and it is just as I thought. They do not find as to the liability of the Government of the United States upon these questions that now arise; they only state the questions of fact, and they state the amount due. The only statement as to the conclusion of law is this:

The court decides, as conclusions of law, that said seizure and condemnation were illegal, and the owners had valid claims of indemnity therefor upon the French Government prior to the ratification of the convention between the United States and the French Republic concluded on the 30th day of September, 1800; that said claims were relinquished to France by the Government of the United States by said treaty in part consideration of the relinquishment of certain national claims of France against the United States, and that the claimants are entitled to the following sums from the United States.

Mr. BURNHAM. Mr. President, I would ask the Senator to tell us, if he can, in what more forcible language the validity of these claims against the United States could be expressed.

Mr. OVERMAN. The very question that has arisen here is whether or not the Government is liable for those premiums that were paid. They find the amount that was paid there, and do not decide as to the liability of the Government.

Mr. PAYNTER. Mr. President——

The PRESIDING OFFICER. Does the Senator from Kansas yield to the Senator from Kentucky?

Mr. BRISTOW. Certainly.

Mr. PAYNTER. I do not rise with the view of discussing the question of the liability of the Government for these sums, but for the purpose of calling the attention of the Senator from Kansas to a principle of law that may underlie, and probably did underlie, the opinon of the Supreme Court in fixing the liability of the Government. As I understand, this Government has assumed liability for these claims.

Mr. BRISTOW. Oh, no; the Senator is entirely wrong in that.

Mr. PAYNTER. The decision that was just read seemed to support that view. However, if there is to be controversy about that, I will not proceed along that line further, but I can understand why the court would so hold, as, for instance, where an insurance company insures property and that property is destroyed by the wrongful act of some person, whether by negligence or willfully, then the owner can sue the wrongdoer and recover the value of his property. Of course, he can not also recover the value of it from the insurance company; but suppose he collects the money from the insurance company, then the insurance company has got the same right of action against the wrongdoer as the insured had. I can quite understand why that principle, if not established by the Supreme Court, ought to be and might be upheld by Congress, because I can see that the principle would apply that if this Government is to be responsible for an act of appropriation or for the destruction of property, the responsibility carries with it every liability that grows out of the wrongful act.

Mr. BRISTOW. I desire to call the attention of the chairman of the committee to the last section of the act of 1885, to which he has referred. It is as follows:

SEC. 6. That on the first Monday of December in each year the court shall report to Congress, for final action, the facts found by it, and its conclusions in all cases which it has disposed of and not previously reported.

Such finding and report of the court shall be taken to be merely advisory as to the law and facts found, and shall not conclude either the claimant or Congress—

The findings of the court do not amount to a judgment. They are simply advisory; there is no obligation other than in the case of any information that might come from any other source—

and all claims not finally presented to said court within the period of two years limited by this act shall be forever barred.

Mr. SUTHERLAND. Mr. President——

The PRESIDING OFFICER. Does the Senator from Kansas yield to the Senator from Utah?

Mr. BRISTOW. Certainly.

Mr. SUTHERLAND. If the Senator will permit me to recur to the question asked a few moments ago, I understand the Senator from Kansas to say that the value of the goods is fixed at the place of arrival, while the Senator from New Hampshire [Mr. BURNHAM] says that it is fixed at the place of shipment. I think it is quite important to determine here which of those two statements is correct.

If the Senator from Kansas is correct when he says that the value is fixed at the place of arrival, then it seems to me clearly his argument is correct, because in that case it is to be presumed that the insurance and the freight will be included in the value of the goods at the place of arrival, while if you fix the value at the place of departure, the place of shipment, then exactly the contrary is to be presumed.

Mr. BRISTOW. Does it not appear that if the owner of the ship is to be paid the freight the vessel would earn on the voyage he is not entitled to the insurance or any other expense incident to that voyage? The freight covers the voyage. That is what he is out for. Now, why should we pay both the insurance and the freight?

Mr. SUTHERLAND. The point about it all is this, that if the claimant is entitled to have his claim paid he is entitled to be made whole. If you give him, first of all, the value of the goods at the place of shipment, then he is not made whole, because it is to be assumed that he would not pay the freight and he would not pay the insurance unless he expected to get the value of the goods at the place of the shipment plus the expense of getting them to the place of destination; in other words, he ought to be made whole for the value of the goods at the place of destination and not at the place of shipment. It seems to me that that is the very crux of this situation.

Mr. BRISTOW. Then, according to the view of the Senator from Utah, as I understand, if he is entitled to the value of the goods at the place of arrival, he is not entitled to the insurance premium, but he would be entitled to the freight. If he is entitled to the value of the goods at the place of shipment, he would be entitled to the insurance premium, but not to the freight, because he had not delivered the goods. He would not be entitled to the freight if he had not performed the service.

Mr. WARREN. Mr. President——

The PRESIDING OFFICER. Does the Senator from Kansas yield to the Senator from Wyoming?

Mr. BRISTOW. Certainly.

Mr. WARREN. I understand that the goods are insured at their value at the place from which they are shipped. I understand in settling that they do not settle for the full amount of freight to the destination; that the insurance is a part of the expense of carriage, and if the goods had arrived at their destination their market value would have been sufficient to cover the original cost and all expenses, including insurance and freight. I understand that has been the view of the court. Now, if the Senator has anything before him that shows that through freight has been collected where the vessels were captured en route, I should be glad to have him quote it, because I do not so understand.

Mr. BRISTOW. I think it is incumbent upon the authors of this bill to show that this freight item should be allowed. There is nothing said in the reports as to whether all the prospective earnings had been allowed or two-thirds of them.

Mr. WARREN. Very well. I think sometimes when we get beaten in a lawsuit we are rather disposed afterwards to try the suit ourselves. Congress had these claims before it for some 80 years, having undertaken to settle them one at a time and to argue these small matters here. Finally, by a special act, they were sent to the court to render us the facts in each case. All of these points have been tried out in the Court of Claims and by the Supreme Court. The findings have been brought here. The question of loyalty, the question of laches, and so forth, which sometimes enter into claims for stores and supplies, do not enter in the case of these claims. The finding on one is the finding on them all, except as to the amount. I may say that the first, $25,000,000 in round numbers, of these claims passed upon by the court were cut down to something like 14 per cent of what the original claims amounted to when submitted. After we ourselves have given up the struggle with these individual claims, after we have sought refuge in the courts, after they have taken hold of them in due season and passed upon them in the lower and superior courts, when no question can come up now except as to whether the court allowed too much or too little, it seems to me it is incumbent upon us to accept those findings and pay the claims. Where would we land if we should take every one of those little claims and dissect them, as the Senator is dissecting the one now before him?

Mr. BRISTOW. I want to call the Senator's attention to the last paragraph of the act of 1885, under which we are proceeding.

Mr. WARREN. I understand that.

Mr. BRISTOW. It is as follows:

> And nothing in this act shall be construed as committing the United States to the payment of any such claims.

Mr. WARREN. Very well. That was to distinguish between cases and leave to Congress the matter of judgment. It is entirely within the will of Congress to allow these claims or not to allow them. I have no doubt that it can allow any part of them; but when these claims accrued, when they were due from France to private citizens and were recognized, and when this Government got credit for them in settling with France, but was too poor at the time to pay them, and they have been allowed to run this long time, it does seem to me——

Mr. BRISTOW. If the Senator will permit an interruption——

Mr. WARREN. I beg pardon. If the Senator will allow me just a moment; it does seem to me as if we could accept the findings of that court, especially organized to determine such cases, rather than to take them up claim by claim and discuss the items here.

Mr. CRAWFORD. If the Senator will permit me on the question of rates.

Mr. BRISTOW. I should like first to say, in answer to the statement of the Senator from Wyoming [Mr. WARREN], that, as I understand, it is our duty to take these claims up item by item and pay those which are just and right and deny those which are not. That is what we are undertaking to do, and I am sorry the committee has not done that. If it had done so, this discussion would not have been necessary. I am contending against this bill because it undertakes to pay claims that ought not to be paid. Even if the claims rested upon a valid basis, you can not justify the payment of both freight and insurance.

Mr. WARREN. Our predecessors for a hundred years and more have been unable to arrive at any better solution than that, and I doubt if the next hundred years would see any considerable portion of them paid if we should undertake to pass as a court upon every one of them.

Mr. BRISTOW. I think I shall be able to submit evidence here that our predecessors during the hundred years that have passed have been a good deal nearer right than we are in considering these claims, for they have uniformly rejected them until recent times.

Mr. CRAWFORD. Mr. President, will the Senator from Kansas permit me just a word on the question of freights, which seems to be a question of debate?

The PRESIDING OFFICER. Does the Senator from Kansas yield to the Senator from South Dakota?

Mr. BRISTOW. Certainly.

Mr. CRAWFORD. That question appears to have been settled in determining the damages in this case. I have here the decision in the Hooper case—Hooper, administrator, *v.* The United States (22 C. Cls.)—in which they speak of the vessel when destroyed having "only earned freight pro tanto." Then the court said:

> Those familiar with the proceedings of prize courts know that a substantially arbitrary rule is there often adopted in practice to enforce justice, and now, nearly a hundred years after the events from which these claims arise, when all witnesses are dead and many records destroyed, we are forced to this course, as it is evidently impossible to estimate in every instance precisely the proportion of freight earned. Where such an estimate can be made we shall make it, in other cases we shall adopt a general rule.
>
> In seeking for such a rule, we learn that in commercial cities, in the adjustment of average losses, there is a practice to award arbitrarily two-thirds of the full freight on the immediate voyage. This course was in effect followed by the commissioners under the treaty of 1831 with France, who made a similar allowance as a fair measure of the increase in value of the cargo by reason of the distance to which it had been transported at the time of capture; and the award was made to the shipper if he had paid freight; to the shipowner if the freight had not been paid.
>
> After carefully examining the cases before us we conclude that this rule is substantially just, and we adopt it.

They have adopted that rule where it is not otherwise ascertainable, and have followed it in these cases.

Mr. BRISTOW. That may be satisfactory as to the freight, but it does not settle the question as to whether or not the insured is entitled to both the freight and the premium. If he is entitled to one, he is not entitled to the other. He can not be entitled to both of them.

Mr. CRAWFORD. If the Senator please, it seems to me simply a question of situation. If we value this property at the point of shipment for ascertaining the loss, you must consider how much was put into the venture in the way of investment. It depends on the point where you measure the value, whether at the place of shipment or at the place of destination.

Mr. BRISTOW. I have a number of illustrations here similar to the one that we have just been discussing. The same principle prevails in all of them. I have already consumed much more time than I had intended. I want now to refer to the ship *Venus*.

Mr. CUMMINS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Kansas yield to the Senator from Iowa?

Mr. BRISTOW. I do.

Mr. CUMMINS. I was not in the Chamber at the time the Senator from Kansas began his argument upon this question, but I should like a little information upon these points. By whom is the claim made, the shipowner or the owner of the goods?

Mr. BRISTOW. In this particular instance it is made by the shipowner and, in part, the owner of the goods. Sometimes the shipowner is the owner of the goods; again, the owner of the ship owns simply the ship and a number of men own the goods. In the event that there is a difference of ownership, then there are a different number of claims.

Mr. CUMMINS. In any case does the shipowner who claims damages for the destruction or for the capture of the ship insist that he is entitled to any freight that he would have earned from that voyage?

Mr. BRISTOW. Oh, yes.

Mr. SMOOT. Two-thirds of it.

Mr. BRISTOW. Whether or not it is two-thirds I do not know, but the freight is always allowed. Sometimes the freight is more than the value of the cargo.

Mr. CUMMINS. I can easily understand, Mr. President, how the payment of a premium upon goods might add to the value of those goods and might be included in a recovery for their value, but I am at a loss to understand how a common carrier who is engaged in transporting property from one part of the world to another can recover damages or can include the freight that might have been earned in any particular trip in order to enhance the value of the instrumentality. For instance, suppose a carload of goods had begun a journey in the hands of the New York Central Railroad from New York to San Francisco, and when the car had gone 100 miles let us

assume that it was destroyed. The owner of the goods could recover the value of the goods from whomsoever was negligent in the matter; but would it be contended that the New York Central Railroad could recover, from the person or company that may have been negligent or may have caused the destruction of the car, the earnings upon that car from New York to San Francisco? I do not believe that there is any lawyer here who would assert that any such rule of damages could be applied.

Mr. LODGE. It is the rule of the Supreme Court, laid down by Mr. Justice Story. I will quote the case, if the Senator will allow me.

Mr. CUMMINS. I do not see how that can be true, although it may be true, for I have not examined the decision to which the Senator from Massachusetts refers.

Mr. LODGE. The opinion of Mr. Justice Story in the Comerceen case and many other cases, including decisions of the Supreme Court of the United States, the United States circuit courts, and the English admiralty courts, are cited by the Court of Claims, and the court laid down the rule fixing "two-thirds of the full freight as the measure of damages."

Mr. CUMMINS. The measure of damages upon what?

Mr. LODGE. I will read from the decision of the court:

> Freight earned is an element of value in property lost; full freight may be often recoverable, although the vessel may not reach her destination; but in these cases the court adopts the general rules of commercial usage, two-thirds of the full freight as the measure of damages.

That is the decision of the Court of Claims.

Mr. CUMMINS. Does that apply to the goods or to the ship?

Mr. LODGE. No; that is the freight in the vessel.

Mr. CUMMINS. Precisely.

Mr. LODGE. On the goods in the vessel.

Mr. CUMMINS. Precisely. I would have no quarrel with that statement of the law, because the freight paid upon the goods, if the journey is completed, adds to the value of the goods.

Mr. CRAWFORD. Will the Senator permit me here?

Mr. CUMMINS. Therefore it would be proper to allow a recovery. But I have never heard that upon the instrumentality of carriage the earnings of the ship or car, as the case might be, could be allowed.

Mr. LODGE. If the Senator will allow me, Judge Story says further:

> In the room of this fund the captor has substituted his own personal responsibility, for loss accrues by the fault of his agent. I see no distinction under which I can pronounce that the claimant is not as much entitled to the freight as to the vessel.

Mr. CUMMINS. Was the claimant in the case from which the Senator is reading the owner of the ship or of the goods?

Mr. LODGE. It is the case in First Gallison, the Comerceen case. I have not the volume here. Judge Story cited with approval the opinion of Sir William Scott upon the same subject, and then rendered the opinion that freight is as much a part of the loss as the ship.

Mr. CUMMINS. I simply wanted to be clear whether we were asked to vote for an appropriation which would pay the shipowner or the common carrier for the freight that the ship or he would earn upon the voyage in question.

Mr. CRAWFORD. If the Senator will permit me, under the decision of the Court of Claims to which I have called attention, which reviews the general authorities in this matter—it is not the rule we apply in our State courts in the ascertainment of damages from common carriers, but a rule which applies to indemnity cases, spoliation cases—the rule applies to the vessel as well as to the owner of the effects in the vessel. And the court here says, speaking of the vessel—

> She had only earned freight pro tanto—

and then says it is impossible in every instance to estimate precisely the proportion of freight earned, and because of that difficulty the court follow a rule which they say prevails generally in that class of cases, to settle upon a basis of two-thirds of the freight.

Mr. CUMMINS. I understood the extract quoted by the Senator from South Dakota, but nothing could convince me that such an allowance would be either just or fair, whatever may be the technical rule which may be applied in admiralty cases. Of course, I discriminate the suggestion I have just made from the rule that might fairly and honestly be applied to the goods themselves, because the freight, if paid upon them, and they reached their destination, would naturally be added to their value.

Mr. CRAWFORD. If a vessel is one-third of the way out on its journey, its owner has had his men employed, he has been to that expense, he has carried the freight that far, and then if a privateer attacks the ship and strikes it down and destroys it, he not only loses his ship but he loses what he has earned during the time the ship was out at sea.

Mr. CUMMINS. Precisely.

Mr. CRAWFORD. And as a matter of right and justice in the settlement of the claim, why should he not be reimbursed?

Mr. CUMMINS. He loses also what he would have earned during the ensuing life of the ship. Why not add all of the freight the ship could have earned in 25 years, if the ship lasted so long?

Mr. CRAWFORD. They do not undertake to do that. They undertake to allow him what his vessel has earned pro tanto, and the difficulty is found in ascertaining what that is, and so, in lieu of the actual amount, the general rule prevails to allow two-thirds.

Mr. CUMMINS. I take it the real rule is what the ship was worth at the time she was wrongfully seized and destroyed. That ought to be the rule of damages in that case as in every other.

Mr. BRISTOW. The fact remains that it is proposed here not only to pay these men the freight, but also to pay for the insurance and the premium. Their vessels were insured and their cargoes were insured; they were lost and the amounts for which they were insured were paid, and it is proposed to reimburse the owners for the premiums they paid. They have got all they contracted for. The insurance companies in this business have charged the shipowners an exorbitant rate. When loss occurred they paid it. Now the shipowners, who received full payment of the policies they bought, are not only to be reimbursed for the premiums they paid, but for the freight the vessel would have earned if it had completed the voyage.

Mr. CUMMINS. One more question, and I will not interrupt the Senator from Kansas again. Were these losses paid by the underwriters, the insurers?

Mr. BRISTOW. Yes.

Mr. CUMMINS. And do the owners of either ships or goods who have received their indemnity, or insurance, ask the Government to pay for their ships and goods again?

Mr. BRISTOW. The Government deducts the insurance they received from the value. It does not pay the policy the second time.

Mr. CUMMINS. Precisely. I wanted to be sure.

Mr. BRISTOW. But it pays them back the premiums they paid on the policy. They not only get the full amount of the policy, but they get the premium as well, and if there is any reason that can justify such an expenditure as that I can not see it.

Again, I want to call attention to the ship *Venus*. This was an armed vessel. It was not a merchant ship. It was armed with 12 guns. Its cargo was $570 worth of silk stockings that belonged to the captain, and $31,000 of Spanish milled coins that belonged to the owners and the captain. That is the only cargo the ship had. It was manned with 25 men and 12 guns. It was near the Mediterranean Sea. I should like to know where this vessel got the $31,000 of Spanish coin, and where the master got the $570 worth of silk stockings. Was he engaged in commercial trade or as a privateer or in piracy, which? This is not the cargo of a vessel engaged in commerce. There was an armed ship that was sailing out on the sea, and it got somewhere this money and bundle of stockings; and that is all it seemed to have. It was overtaken by three French vessels that were much stronger than it, and it surrendered, of course, rather than be sunk. Now, the owners of that vessel come here and want to be reimbursed for this $31,000 of Spanish milled coin that they had secured from somewhere, nobody knows where, and these stockings. That is all the cargo he had.

I want to know if the Senate of the United States proposes to make good, after 110 years, such a loss as that? Still that is what this bill proposes. I do not know—there is not any evidence here that shows—but the natural, normal guess would be that he was a privateer or pirate sailing under the American flag because of the kind of cargo he had aboard.

Mr. LODGE. I will say to the Senator that he could not have been a privateer, for we were not in a state of declared war then, and no letters of marque were issued at that time.

Mr. BRISTOW. Then he was probably a pirate.

Mr. LODGE. Well, the Senator ought to know.

Mr. BRISTOW. And I do not think we are under any obligation to reimburse him for the losses he incurred when he was captured by the French.

I could pursue this line of exposition through half of this volume. I have simply given two illustrations. They are not extreme. Nine-tenths of these claims are of the same character as the claims to which I have referred.

It is contended here that this is a debt of sacred honor; that we have been very negligent in discharging it. It is even claimed by some that the United States Government has received this money, and that the forefathers, the statesmen who guided the destiny of our country for half a century, were so dishonest, so utterly disregardful of the rights of American citizens at that time, that they refused to pay money they had collected; that they collected this money and kept it and would not pay it out to their own citizens. I think that is a libel on the fathers of this country which the Congress ought to resent.

Mr. CRAWFORD. I will ask the Senator to state who made such a statement as that.

Mr. BRISTOW. Well, I have heard it frequently.

Mr. CRAWFORD. I have not heard it, and I have not read it in any of the reports.

Mr. BRISTOW. The senior Senator from New Hampshire made the remark just a few moments ago that this was a debt of sacred honor.

Mr. CRAWFORD. That is a different proposition.

Mr. BRISTOW. And the chairman of the committee has appealed upon that ground time and again.

Mr. LODGE. That has been stated again and again.

Mr. CRAWFORD. That is altogether different.

Mr. BURNHAM. Mr. President——

The PRESIDING OFFICER. Does the Senator from Kansas yield to the Senator from New Hampshire?

Mr. BRISTOW. I do.

Mr. BURNHAM. The obligations of this country to France were paid by offsetting the claims of individuals against France, one offsetting the other, counterclaims. No money came to this Government, and nobody has stated that it did. Nobody has referred to the dishonor of this Government in not paying money it received, because it did not receive any.

Mr. BACON. I think the Senator will find, if he will examine the terms of the treaty, that it hardly bears out the statement he just made, that the Government paid whatever obligations France claimed against it by abandoning or giving up claims we had against France. The treaty will not sustain that proposition.

Mr. LODGE. If the Senator will allow me, we renounced——

Mr. BACON. I am speaking of what the Senator from New Hampshire said.

Mr. LODGE. Certainly. I was only going to say, if the Senator will permit me, that France renounced her claims against us for our guaranty as to the West India Islands——

Mr. BACON. Yes.

Mr. LODGE. And we renounced our claims for damages to our citizens.

Mr. BACON. Yes; but it was at no place stated that the one was in consideration of the other.

Mr. LODGE. We offered to pay France eight millions to be relieved of that guaranty. That is what we thought it worth.

I want to read only one thing. Chief Justice Marshall said:

Having been connected with the events of the period and conversant with the circumstances under which the claims arose—

He was Secretary of State at the time—

be was, from his own knowledge, satisfied that there was the strongest obligation on the Government to compensate the sufferers by the French spoliations.

So the idea that it is an obligation on the part of the Government is not new.

Mr. BACON. And another Chief Justice, Mr. Fuller, expressly took the position that it was not a matter of obligation; that it was paid as a matter of grace. He used the word "grace."

Mr. BRISTOW. As to the merits of these claims, if I may have the attention——

Mr. BURNHAM. Mr. President, the Senator from Georgia must have misapprehended, certainly, my intent. I did not claim that by the terms of the treaty it was a set-off; but the practical effect was that there was an abandonment, on the one side, by France of her national claims against us, and on our part, of the claims of our individual citizens against France. That was the practical effect of it.

Mr. BACON. With the permission of the Senator from Kansas, I wish to read an extract from the opinion of the court, written by the Chief Justice, in the case of Blagge against Balch, delivered in 1895, on page 457 of One hundred and sixty-second United States Supreme Court Reports, in which there is language construing this very act. He says:

Under the act of January 20, 1885, the claims were allowed to be brought before the Court of Claims, but that court was not permitted to go to judgment. The legislative department reserved the final determination in regard to them to itself, and carefully guarded against any committal of the United States to their payment. And by the act of March 3, 1891, payment was only to be made according to the proviso. We think—

That is, the court—

We think that payments thus prescribed to be made were purposely brought within the category of payments by way of gratuity, payments as of grace and not of right.

Mr. BURNHAM. Mr. President, I trust before the discussion is ended that the matter may be more fully cleared up historically by quoting the authorities of the time. There were diplomats and statesmen representing this country and France, and the history covers many years. It shows just what were the relations of these two Governments; and while the law of 1885 does not turn over to the court absolutely these matters without further action by Congress, it does give that court authority to determine the validity and amount of these claims.

Mr. BRISTOW. Now, as to the validity of these claims, it has been stated that it is a sacred debt and obligation which we owe and that we received the money and refused to pay it out. Other statements have been made that would discredit the founders of our country, and I want to read a message from President Polk relating to these claims in vetoing a bill that was passed in 1846—64 years ago. It seems to me that the views of the President of the United States at that time, when he was within 50 years of the event that led to the origin of these claims, ought to have special weight as to their validity and their righteousness. Mr. Polk, in vetoing the bill which carried an appropriation of $5,000,000 to pay them, said:

I return to the Senate, in which it originated, the bill entitled "An act to provide for the ascertainment and satisfaction of claims of American citizens for spoliations committed by the French prior to the 31st day of July, 1801," which was presented to me on the 6th instant, with my objections to its becoming a law.

In attempting to give to the bill the careful examination it requires, difficulties presented themselves in the outset from the remoteness of the period to which the claims belong—

President Polk, 64 years ago, found himself somewhat embarrassed in ascertaining the validity of these claims because of the remoteness of the period in which they originated, but it seems that there are many at this time, 110 years having elapsed, who have no difficulty whatever in ascertaining the validity of these claims, though it is twice as long as the remoteness of the period of which President Polk complained—

the complicated nature of the transactions in which they originated, and the protracted negotiations to which they led between France and the United States.

The short time intervening between the passage of the bill by Congress and the approaching close of their session, as well as the pressure of other official duties, have not permitted me to extend my examination of the subject into its minute details; but in the consideration which I have been able to give to it I find objections of a grave character to its provisions.

For the satisfaction of the claims provided for by the bill it is proposed to appropriate $5,000,000. I can perceive no legal or equitable ground upon which this large appropriation can rest. A portion of the claims have been more than half a century before the Government in its executive or legislative departments, and all of them had their origin in events which occurred prior to the year 1800. Since 1802 they have been from time to time before Congress. No greater necessity or propriety exists for providing for these claims at this time than has existed for near half a century, during all of which period this questionable measure has never until now received the favorable consideration of Congress.

Now, if the Congress more than a half century ago, when the claims were comparatively fresh in the public mind, when evidences as to their validity or invalidity could be more easily secured than now—if Congress during all that period found no reason for passing upon these claims favorably, then certainly it is not incumbent upon us to assume that we know more now than Congress did then.

It is scarcely probable, if the claim had been regarded as obligatory upon the Government or constituting an equitable demand upon the Treasury—

To this I call the attention of the Senator from Wyoming, who remarked sometime since that then the Government was poor and unable to pay them and pleaded poverty.

President Polk says:

It is scarcely probable, if the claim had been regarded as obligatory upon the Government or constituting an equitable demand upon the Treasury that those who were contemporaneous with the events which gave rise to it should not long since have done justice to the claimants. The Treasury has often been in a condition to enable the Government to do so without inconvenience if these claims had been considered just. Mr. Jefferson, who was fully cognizant of the early dissensions between the Governments of the United States and France, out of which the claims arose, in his annual message in 1808 adverted to the large surplus then in the Treasury and its "probable accumulation," and inquired whether it should "lie unproductive in the public vaults"; and yet these claims, though then before Congress, were not recognized or paid. Since that time the public debt of the Revolution and of the War of 1812 has been extinguished, and at several periods since the Treasury has been in possession of large surpluses over the demands upon it. In 1836 the surplus amounted to many millions of dollars, and, for want of proper objects to which to apply it, it was directed by Congress to be deposited with the States.

So the claim can not be made that the Government was not able to meet its obligations then, if they were just, because it was abundantly able to do so, just as able as it is now.

Continuing, President Polk says:

During this extended course of time, embracing periods eminently favorable for satisfying all just demands upon the Government, the claims embraced in this bill met with no favor in Congress beyond reports of committees in one or the other branch. These circumstances alone are calculated to raise strong doubts in respect to these claims, more especially as all the information necessary to a correct judgment concerning them has been long before the public. These doubts are strengthened in my mind by the examination I have been enabled to give to the transactions in which they originated.

The bill assumes that the United States have become liable in these ancient transactions to make reparation to the claimants for injuries committed by France. Nothing was obtained for the claimants by negotiation.

That is the statement, direct and specific, made by President Polk in his message.

Continuing, Mr. Polk said:

And the bill assumes that the Government has become responsible to them for the aggressions of France. I have not been able to satisfy myself of the correctness of this assumption, or that the Government has become in any way responsible for these claims. The limited time allotted me before your adjournment precludes the possibility of reiterating the facts and arguments by which in preceding Congresses these claims have been successfully resisted.

Mr. GALLINGER. Mr. President——

The PRESIDING OFFICER. Does the Senator from Kansas yield to the Senator from New Hampshire?

Mr. BRISTOW. I do.

Mr. GALLINGER. The Senator seems to be arguing against these claims in part because they are ancient.

Mr. BRISTOW. I have been reading the message of President Polk when the case was fresh before him for his official consideration, and it appeals to my mind as being very strong and conclusive evidence that there was no——

Mr. GALLINGER. Has the Senator given consideration to the fact that in this bill one-third of the amount is for claims for the occupation and destruction of churches and other property in the South 50 years ago? They have not yet been paid. Why were they not paid when they were fresh? The Government had money. It did not pay them. The claimants have been kept out of their money for 50 years. What difference is there, as a matter of principle, between 50 years and 100 years? I wish the Senator would address himself to those other claims for a few minutes.

Mr. BACON. Will the Senator permit me to make a suggestion to the Senator from New Hampshire?

Mr. BRISTOW. I do.

Mr. BACON. I suggest to the Senator from New Hampshire a fact well known to him and to everybody else, which is that for a long period of time after the close of the war which stirred up to such terrible depths the passions of this country there was not on the part of the Government of the United States a disposition to treat with the same degree of consideration claims of that kind that is now shown, when those passions are cooled and we come to look at things with a little more consideration and favor.

Mr. GALLINGER. Yes.

Mr. BACON. I think that is an undoubted fact, which the Senator himself will recognize.

Mr. GALLINGER. That may be, but it does not change the fact that if these passions had cooled 25 years ago—and I think they did to a considerable extent—the claimants would still have been kept out of their money for 25 years.

Mr. CLARKE of Arkansas. Will not the Senator also recall the fact that when these claims were recognized it was as a matter of benevolence and not as a matter of legal liability? The late Senator from Massachusetts, Mr. Hoar, supported a measure in behalf of an institution in Virginia, the William and Mary College, founded in colonial times, and he put his support of the proposition upon the ground of sentiment and benevolence. He did not pretend to recognize a legal obligation.

Any moment Congress may refuse to pay these church claims and be within its rights. They are not preferred here as a matter of absolute legal liability. They are not brought here on the right or wrong of the proposition, but in the nature of benevolence, on the ground that the persons who were engaged in these vocations were not engaged in war.

Mr. GALLINGER. Does the Senator from Arkansas contend that the seven or eight hundred thousand dollars of southern claims involved in this bill are to be appropriated as a matter of benevolence?

Mr. CLARKE of Arkansas. Absolutely, so far as these church claims are concerned.

Mr. GALLINGER. Then we ought to stop it.

Mr. CLARKE of Arkansas. Stop it here and now, and I will vote with you.

Mr. GALLINGER. I wish the Senator's benevolent heart could be extended to going gack to these people who were despoiled of their property more than 100 years ago.

Mr. CLARKE of Arkansas. That involves the question of meum and tuum. It is a question of the liability which the Government ought to recognize and pay. It is not a question of benevolence. It is not a question of sentiment.

Mr. GALLINGER. Their justice has been recognized by congressional committees over and over again.

Mr. CLARKE of Arkansas. The authorities presented by the Senator from Kansas show that when these things were in the cognizance of those cotemporaneous with the persons who brought forward the claims, the claims were not recognized as legal obligations of any kind.

Mr. GALLINGER. Then the Government ought not to have obligated itself to pay them.

Mr. CLARKE of Arkansas. The Government has not obligated itself to pay them, according to all the authorities that have been brought in here to-day.

Mr. GALLINGER. If the Senator will go carefully into the history of this matter—more carefully than he has—I think he will find——

Mr. CLARKE of Arkansas. I have not read it, but I have listened to the reading.

Mr. GALLINGER. He will find there is a very strong moral, if not a legal, obligation.

Mr. CLARKE of Arkansas. Very well; then it ought to be based on that proposition. It is based here upon the judgment of the Court of Claims. It is not sought to be justified by the moral obligations that may lie behind it. That is the aspect in which we are dealing with it.

Mr. GALLINGER. We submitted the class of cases of which I have spoken, the so-called southern claims, to the Court of Claims, and the court found that they ought to be paid, and we are paying them as fast as we can. I do not know how many millions we have paid in the past for the destruction of churches, some of which, I suppose, were mythical, but the court thought they were just, and we paid the claims.

The court has passed upon these claims, and the court has adjudicated the matter as far as the court is concerned, and still we do not pay them. Yet we are told they are moss-grown, and the Government is not under obligation to pay them, and we ought not to pay them.

I think, Mr. President, the Senator from Kansas will never be able to persuade the American people that because a claim is old it ought not to be paid. I once served upon the Committee on Claims in another body, and I said then in debate, which I repeat now, that if there was a law which would apply to the Government of the United States for withholding honest debts to the people of the United States the Government would be in jail all the time, and that is a fact.

The PRESIDING OFFICER. The Senator from Kansas has the floor.

Mr. BRISTOW. The Senator from New Hampshire may impeach the integrity and the moral character of the early founders of this Republic. He may declare that President Polk or the other President to whom I shall refer and the entire organization of Congress and all the Presidents for the first 50 years of our national life repudiated our honest obligations, if he sees fit to do it. I have a higher opinion of the founders of my country than the Senator from New Hampshire seems to have. Until claim agents and attorneys who doubtless have the assignment of most of these claims had become thick about the National Capital, animated by the greed and avarice that prevail among that class of practitioners, until these men persistently developed evidence on their side and as the events of the history of our country in the early days became dim to Members of Congress, these claims had no standing.

Now, passing from the veto message of President Polk, who considered and declared there was no legal obligation and no moral obligation on the part of the Government to pay these claims, I take up another message, a message of President Franklin Pierce. This message was written in 1855, after another effort had been made to validate these claims, still 55 years closer to the event than we are. It is quite lengthy. He devotes the first page and a half of the message to the discussion of the responsibilities of the Executive in assuming the veto power, and I would like to call the attention of those who are interested in the merits of this controversy to the opinion offered by President Pierce.

Mr. JONES. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The Secretary will call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Bacon	Clarke, Ark.	Heyburn	Purcell
Borah	Crane	Johnston	Rayner
Bourne	Crawford	Jones	Root
Bradley	Cullom	Kean	Smith, Md.
Brandegee	Cummins	Lodge	Smith, Mich.
Briggs	Dillingham	McCumber	Swanson
Bristow	Dixon	Martin	Terrell
Brown	Fletcher	Nixon	Thornton
Burkett	Flint	Oliver	Warner
Burnham	Foster	Overman	Warren
Burton	Frazier	Page	Wetmore
Carter	Gallinger	Penrose	Young
Clark, Wyo.	Gore	Perkins	

The PRESIDING OFFICER. Fifty-one Senators have answered to their names. A quorum is present. The Senator from Kansas will proceed.

Mr. BRISTOW. I should like to inquire about how long the Senator from New Hampshire expects to keep the Senate in session.

Mr. BURNHAM. The Senator probably can give an idea as to how long his remarks will continue.

Mr. BRISTOW. I want to read and comment somewhat upon this veto message of President Pierce. It is quite lengthy and it is an exhaustive consideration of the question. I think the Senate ought to have the full benefit of Mr. Pierce's views at that time, after giving very careful consideration to the question which is now before us, and I believe it is due the country as well as the Senate that it should not only be read into the RECORD but emphasized.

Mr. BURNHAM. I would be very glad if the Senator would proceed as far as he can conveniently to-night that we might make some progress. I should hope very much that he would.

Mr. BRISTOW. About how long does the Senator wish me to continue?

Mr. BURNHAM. A reasonable time. I should say an hour.

Mr. BRISTOW. Some Senators have suggested to me that they desire an executive session. Of course, if it is the desire of the Senator from New Hampshire to undertake a test of endurance, I can stand it as long as the Senate can; but I do not think that is necessary.

Mr. BURNHAM. That was not the suggestion, of course.

Mr. BRISTOW. President Pierce, after advancing his views upon the responsibilities that are conferred upon the Executive in the power of vetoing bills, proceeds then to discuss the merits of these claims. I know that the reading of a message is sometimes rather dull and monotonous, but it certainly has a direct bearing upon the merits of the question that is before the Senate. Mr. Pierce said:

I cheerfully recognize the weight of authority which attaches to the action of a majority of the two Houses. But in this case, as in some others, the framers of our Constitution, for wise considerations of public good, provided that nothing less than a two-thirds vote of one or both of the Houses of Congress shall become effective to bind the coordinate departments of the Government, the people, and the several States. If there be anything of seeming invidiousness in the official right thus conferred on the President, it is in appearance only, for the same right of approving or disapproving a bill, according to each one's own judgment, is conferred on every Member of the Senate and of the House of Representatives.

It is apparent, therefore, that the circumstances must be extraordinary which would induce the President to withhold approval from a bill involving no violation of the Constitution. The amount of the claims proposed to be discharged by the bill before me, the nature of the transactions in which those claims are alleged to have originated, the length of time during which they have occupied the attention of Congress and the country, present such an exigency. Their history renders it impossible that a President who has participated to any considerable degree in public affairs could have failed to form respecting them a decided opinion upon what he would deem satisfactory grounds. Nevertheless, instead of resting on former opinions, it has seemed to me proper to review and more carefully examine the whole subject, so as satisfactorily to determine the nature and extent of any obligations in the premises.

I feel called upon at the threshold to notice an assertion, often repeated, that the refusal of the United States to satisfy these claims in the manner provided by the present bill rests as a stain on the justice of our country.

That is familiar. The same allegations were made then that have been made in this Chamber this afternoon, and President Pierce resented it then, as we ought to now. Continuing, Mr. Pierce said:

If it be so, the imputation on the public honor is aggravated by the consideration that the claims are coeval with the present century, and it has been a persistent wrong during that whole period of time. The allegation is that private property has been taken for public use without just compensation, in violation of express provision of the Constitution, and that reparation has been withheld and justice denied until the injured parties have for the most part descended to the grave.

I want to call the attention of every Senator here to the following sentence:

But it is not to be forgotten or overlooked that those who represented the people in different capacities at the time when the alleged obligations were incurred, and to whom the charge of injustice attaches in the first instance, have also passed away and borne with them the special information which controlled their decision and, it may be well presumed, constituted the justification of their acts.

I wish every Senator who is required to vote upon this measure would read this message, if he has not the time and the convenience to listen to it. Continuing, Mr. Pierce said:

If, however, the charge in question be well founded, although its admission would inscribe on our history a page which we might desire most of all to obliterate, and although, if true, it must painfully disturb our confidence in the justice and the high sense of moral and political responsibility of those whose memories we have been taught to cherish with so much reverence and respect, still we have only one course of action left to us, and that is to make the most prompt and ample reparation in our power and consign the wrong as far as may be to forgetfulness.

But no such heavy sentence of condemnation should be lightly passed upon the sagacious and patriotic men who participated in the transactions out of which these claims are supposed to have arisen, and who, from their ample means of knowledge of the general subject in its minute details and from their official position, are peculiarly responsible for whatever there is of wrong or injustice in the decisions of the Government.

Their justification consists in that which constitutes the objection to the present bill, namely, the absence of any indebtedness on the part of the United States. The charge of denial of justice in this case, and consequent stain upon our national character, has not yet been indorsed by the American people. But if it were otherwise, this bill, so far from relieving the past, would only stamp on the present a more deep and indelible stigma. It admits the justice of the claims, concedes that payment has been wrongfully withheld for 50 years, and then proposes not to pay them, but to compound with the public creditors by providing that, whether the claims shall be presented or not, whether the sum appropriated shall pay much or little of what shall be found due, the law itself shall constitute a perpetual bar to all future demands. This is not, in my judgment, the way to atone for wrongs, if they exist, nor to meet subsisting obligations.

Now, I desire to call special attention to the following paragraph:

If new facts, not known or not accessible during the administration of Mr. Jefferson, Mr. Madison, or Mr. Monroe, had since been brought to light, or new sources of information discovered, this would greatly relieve the subject of embarrassment. But nothing of this nature has occurred.

That those eminent statemen had the best means of arriving at a correct conclusion no one will deny. That they never recognized the alleged obligation on the part of the Government is shown by the history of their respective administrations. Indeed, it stands not as a matter of controlling authority, but as a fact of history, that these claims have never since our existence as a Nation been deemed by any President worthy of recommendation to Congress.

It remained for the statesmen of this age and this period of legislative extravagance and profligacy to appropriate money to pay these unwarranted claims.

Mr. GALLINGER. Mr. President——

The PRESIDING OFFICER. Does the Senator from Kansas yield to the Senator from New Hampshire?

Mr. BRISTOW. I do.

Mr. GALLINGER. The Senator is not quite accurate in that statement, because the Congress of the United States had passed the bill before it was vetoed by either Polk or Pierce. So we ought to give some credit to our own body as against the opinion of a Chief Executive.

Mr. BRISTOW (reading):

Claims to payment can rest only on the plea of indebtedness on the part of the Government. This requires that it should be shown that the United States have incurred liability to the claimants, either by such acts as deprived them of their property or by having actually taken it for public use without making just compensation for it.

The first branch of the proposition—that on which an equitable claim to be indemnified by the United States for losses sustained might rest—requires at least a cursory examination of the history of the transactions on which the claims depend. The first link which in the chain of events arrests attention is the treaties of alliance and of amity and commerce between the United States and France negotiated in 1778. By those treaties peculiar privileges were secured to the armed vessels of each of the contracting parties in the ports of the other, the freedom of trade was greatly enlarged, and mutual obligations were incurred by each to guarantee to the other their territorial possessions in America.

I will ask that I be permitted to insert in the RECORD, without reading, the following two paragraphs, which is a detailed discussion of these treaties and the obligations which the country assumed prior to the period of hostility or unfriendliness which resulted in the creation of the claims, because it is a necessary part of the argument.

The PRESIDING OFFICER. Without objection, it will be so ordered.

The matter referred to is as follows:

In 1792–93, when war broke out between France and Great Britain, the former claimed privileges in American ports which our Government did not admit as deducible from the treaties of 1778 and which it was held were in conflict with obligations to the other belligerent powers. The liberal principle of one of the treaties referred to—that free ships make free goods, and that subsistence and supplies were not contraband of war unless destined to a blockaded port—were found, in a commercial view, to operate disadvantageously to France, as compared with her enemy, Great Britain, the latter asserting, under the law of nations, the right to capture as contraband supplies when bound for an enemy's port.

Induced mainly, it is believed, by these considerations, the Government of France decreed on the 9th day of May, 1793, the first year of

the war, that "the French people are no longer permitted to fulfill toward the neutral powers in general the vows they have so often manifested and which they constantly make for the full and entire liberty of commerce and navigation," and as a countermeasure to the course of Great Britain authorized the seizure of neutral vessels bound to an enemy's port in like manner as that was done by her great maritime rival. This decree was made to act retrospectively and to continue until the enemies of France should desist from depredations on the neutral vessels bound to the ports of France. Then followed the embargo, by which our vessels were detained in Bordeaux, the seizure of British goods on board of our ships and of the property of American citizens under the pretence that it belonged to English subjects, and the imprisonment of American citizens captured on the high seas.

Mr. BRISTOW. After this discussion Mr. Pierce continued:

Against these infractions of existing treaties and violations of our rights as a neutral power we complained and remonstrated. For the property of our injured citizens we demanded that due compensation should be made, and from 1793 to 1797 used every means, ordinary and extraordinary, to obtain redress by negotiation. In the last-mentioned year these efforts were met by a refusal to receive a minister sent by our Government with special instructions to represent the amicable disposition of the Government and people of the United States and their desire to remove jealousies and to restore confidence by showing that the complaints against them were groundless. Failing in this, another attempt to adjust all differences between the two Republics was made in the form of an extraordinary mission, composed of three distinguished citizens, but the refusal to receive was offensively repeated, and thus terminated this last effort to preserve peace and restore kind relations with our early friend and ally, to whom a debt of gratitude was due which the American people have never been willing to depreciate or to forget. Years of negotiation had not only failed to secure indemnity for our citizens and exemption from further depredation, but these long-continued efforts had brought upon the Government the suspension of diplomatic intercourse with France and such indignities as to induce President Adams, in his message of May 16, 1797, to Congress, convened in special session, to present it as the particular matter for their consideration and to speak of it in terms of the highest indignation. Thenceforward the action of our Government assumed a character which clearly indicates that hope was no longer entertained from the amicable feeling or justice of the Government of France, and hence the subsequent measures were those of force.

On the 28th of May, 1798, an act was passed for the employment of the Navy of the United States against "armed vessels of the Republic of France," and authorized their capture if "found hovering on the coast of the United States for the purpose of committing depredations on the vessels belonging to the citizens thereof;" on the 18th of June, 1798, an act was passed prohibiting commercial intercourse with France under the penalty of the forfeiture of the vessels so employed; on the 25th of June the same year an act to arm the merchant marine to oppose searches, capture aggressors, and recapture American vessels taken by the French; on the 28th of June, same year, an act for the condemnation and sale of French vessels captured by authority of the act of 28th of May preceding; on the 27th of July, same year, an act abrogating the treaties and the convention which had been concluded between *the United* States and France, and declaring "that the same shall not henceforth be regarded as legally obligatory on the Government or citizens of the United States;" on the 9th of the same month an act was passed which enlarged the limits of the hostilities then existing by authorizing our public vessels to capture armed vessels of France wherever found upon the high seas, and conferred power on the President to issue commissions to private armed vessels to engage in like service.

These acts, though short of a declaration of war, which would put all the citizens of each country in hostility with those of the other, were nevertheless actual war, partial in its application, maritime in its character, but which required the expenditure of much of our public treasure and much of the blood of our patriotic citizens, who, in vessels but little suited to the purposes of war, went forth to battle on the high seas for the rights and security of their fellow citizens and to repel indignities offered to the national honor.

It is not, then, because of any failure to use all available means, diplomatic and military, to obtain reparation that liability for private claims can have been incurred by the United States, and if there is any pretence for such liability it must flow from the action, not from the neglect, of the United States.

The Senate will observe that the President here is laying the foundation for the further discussion. He continues this for a number of pages, analyzing the history of the time as well as the treaties. He then proceeds to discuss the convention of 1783.

[At this point Mr. BRISTOW yielded the floor for the day.]

Thursday, December 15, 1910.

The PRESIDING OFFICER (Mr. KEAN in the chair). The Senator from Kansas [Mr. BRISTOW] is entitled to the floor.

Mr. BURTON. Mr. President, the Senator from Kansas [Mr. BRISTOW] had not concluded his remarks yesterday. He is temporarily absent from the Chamber, but will return in a few moments. In his absence I should like to ask the Senator from New Hampshire [Mr. BURNHAM], the chairman of the Committee on Claims, several questions about this bill.

It appears that the aggregate amount thus far appropriated for the payment of French spoliation claims, so called, is $3,910,860.61. The amount carried in this bill is $842,688.53, covering 652 claims. Is the Senator from New Hampshire, the chairman of the Committee on Claims, able to state to the Senate the probable or approximate amount of these claims remaining undisposed of?

Mr. BURNHAM. Mr. President, I have the data here. Spoliation claims that have been certified from the Court of Claims to the committee amount to $1,454,671.50—a little less than a million and a half. That is the amount of the claims that have been received by the committee from the Court of Claims.

Mr. BURTON. Additional to those included in this bill?

Mr. BURNHAM. In addition to the $842,000; yes.

Mr. BURTON. Will the Senator from New Hampshire kindly repeat that amount?

Mr. BURNHAM. One million four hundred and fifty-four thousand six hundred and seventy-one dollars and fifty cents.

Mr. BURTON. Additional?

Mr. BURNHAM. Additional.

Mr. BURTON. And what is the number of cases pending undisposed of?

Mr. BURNHAM. I have no information in regard to that. The fact is that a very large proportion of these claims are now rejected—it is something, perhaps, less than 15 per cent of the claims now being heard that are certified favorably—and the number of claims that might be acted upon favorably it is, of course, impossible to say. From some examination, or from some inquiries that have been made of the clerk of the Court of Claims, the best impression I can give the Senator as to the claims to be certified would be perhaps $500,000.

Mr. BURTON. In addition to the $1,454,000?

Mr. BURNHAM. In addition to the $1,454,000.

Mr. BURTON. So the probable amount, in addition to those sought to be recognized in this bill, is, according to the best estimate the Senator from New Hampshire can give, $2,000,000?

Mr. BURNHAM. Somewhere about $2,000,000—$1,954,000.

Mr. BURTON. There is one other question I should like to ask the Senator from New Hampshire. The policy has been adopted by the committee, as I understand, of omitting from the bill insurance money paid by insurance corporations.

Mr. BURNHAM. Yes.

Mr. BURTON. What share of the insurance paid, for which claims have been filed, was paid by companies, and what share by individual underwriters?

Mr. BURNHAM. I do not think I have any data from which I could state that. How they have been divided I can not state. I made the inquiry of Mr. Hopkins, the clerk of the court, as to how many of the claims were individual claims—individual underwriters' claims—and he thought perhaps in amount $150,000 or $200,000. It occurs to me it may be more than that, but he said that the amount found for individual underwriters was relatively small.

Mr. BURTON. Those are included in the remaining estimate of $2,000,000?

Mr. BURNHAM. Yes; they are included in the $2,000,000.

Mr. BURTON. The Senator is unable to make any estimate as to the claims by insurance companies?

Mr. BURNHAM. The aggregate of their claims?

Mr. BURTON. Yes.

Mr. BURNHAM. I think it has been stated, in round numbers, a million and a half.

Mr. BURTON. I should like to ask the Senator from New Hampshire one other question. Is the rejection of those claims of the insurance companies based upon a decision of the court or the judgment of the Committee on Claims?

Mr. BURNHAM. It is based upon the judgment of the Committee on Claims, on the principle that it is not expedient at this time to introduce a bill allowing such a large amount.

Mr. BURTON. I asked the question especially, because yesterday there seemed to be some question raised in regard to it. The Court of Claims sustained that class of claims against the Government, and placed them on the same footing with the other.

Mr. BURNHAM. I am not aware that there is any adverse decision. I think the Court of Claims allow them.

Mr. BURTON. Is the Senator from New Hampshire able to state the total number of boats lost for which claims have been filed?

Mr. BURNHAM. I have seen somewhere a statement that it is somewhere between 2,000 and 3,000, but I may have a wrong impression about it.

Mr. BURTON. But as to the question of a condition of war existing or not, what bearing, in the judgment of the Senator from New Hampshire, does that fact have, that some 3,000 boats were destroyed?

Mr. BURNHAM. Of course our commerce was swept from the sea, practically, for the time being, and this lasted for a period of six or eight years—perhaps longer than that.

The PRESIDING OFFICER. Senators will kindly address the Chair. It is impossible to hear what is going on.

Mr. BURTON. Mr. President, one or two other questions. Would not the fact that so large a number of boats were captured by the French indicate that the condition was more than one of misunderstanding, or friction; in fact, a condition of war?

Mr. BURNHAM. Mr. President, that question, it seems to me, is to be determined upon other grounds than the grounds suggested by the Senator. It was a continual succession of hostilities that covered quite a period of time, and I think it

has been determined judicially, by the opinion of Chief Justice Marshall and other eminent jurists, that there was not a state of war. It was a state of hostilities.

Mr. BURTON. The opinion of Mr. Marshall, however, was not given as a judge of the Supreme Court.

Mr. BURNHAM. That opinion was stated and was repeated by Mr. Clayton, I think, in a report.

Mr. BURTON. Is it not true that France, during all this time, refused to receive any minister from the United States?

Mr. BURNHAM. I think diplomatic relations were suspended during a time, but covering all of this period our Government was sending plenipotentiaries—sending representatives, I should say—to that Government, asking for indemnity, asking satisfaction for these spoliations during the times after 1793.

Mr. BURTON. That was not the main object or the only object of their going.

Mr. BURNHAM. That was not the only object.

Mr. BURTON. Is it not true that they were not only not received at the French court, but that our minister was absolutely excluded from France, and told to leave the country?

Mr. BURNHAM. That was true at one time; but afterwards relations were resumed.

Mr. BURTON. That was true for the most of the time.

Mr. BURNHAM. It was true at one time.

Mr. BURTON. The reception of our minister was not until after these depredations or spoliations had been concluded.

Mr. BURNHAM. I think not. I think those depredations continued even after the treaty of September 30, 1800.

Mr. BURTON. Was not that rather because of the fact of the difficulty of communication in that day?

Mr. BURNHAM. Very likely; but the depredations continued after that date.

Mr. BURTON. In what year does the Senator from New Hampshire understand that the depredations were most numerous?

Mr. BURNHAM. I may be wrong about it, but I think in 1797 and in 1798, perhaps along about that time.

Mr. BURTON. I believe, Mr. President, those are all the questions I desire to ask, at least for the present. I understand the Senator from Kansas desires to proceed. I am greatly obliged to the Senator from New Hampshire.

Mr. HALE. Mr. President——

The PRESIDING OFFICER. Does the Senator from Kansas yield to the Senator from Maine?

Mr. BRISTOW. I do.

Mr. HALE. I think the Senator in charge of the bill has by no means forgotten the old controversies about the insurance. When the risks incident to marine service became almost prohibitory, the insurance companies put up their rates, collected their premiums, and they are the last persons who ought to ask the intervention of Congress now in the way of appropriations for their treasury. Moreover, most of them, or many of them, have gone out of existence, have passed into the hands of receivers and other representatives, and it has been the policy of Congress, so far as I know, during all these last 20 years, not in any way to recognize any equitable claim upon the Government by these insurance companies. I do not know of any bill that has ever been passed which has appropriated for them. If items have crept in, it was unadvisedly, and, as I believe, against the good sense of the equity of this whole proceeding.

Mr. BURNHAM. The Senator is of course aware that in this bill there are none of those claims?

Mr. HALE. Yes; and what I wish to say is in justification of the Senator's course. I think he has been eminently wise in not yielding to the pressure of these old claims, that never ceases, and in keeping them out of this bill.

Mr. BRISTOW. I think the Senator from New Hampshire will find that there are some claims in this bill which will go to insurance companies. A few, I have observed in reading the report, have been provided for.

Mr. BURNHAM. If the Senator will indicate where those claims are, I shall be obliged.

Mr. BRISTOW. I shall undertake to do so. I have not the memorandum here, but I discovered some last night.

Mr. BURTON. If the Senator from Kansas will excuse me, there is an item on page 59—it may be that the claimant or grantee under the bill is an administrator—the second paragraph from the bottom:

The Pennsylvania Co. for insurance on lives.

What is that?

Mr. BURNHAM. That, I understand, is the claim of this company in the capacity of executor; in a fiduciary capacity. It is not a company claim, but one where the company is trustee or fiduciary in some capacity.

Mr. BRISTOW. I should like to inquire of the Senator in charge of the bill upon what theory he bases the contention that the Government assumed any obligation to pay these claims.

Mr. BURNHAM. An answer to that question involves the whole discussion here, and at some suitable time, perhaps near the close of the debate, I will endeavor to state, and I hope to the satisfaction of the Senator, the grounds of our obligation.

Mr. BRISTOW. It might facilitate the debate if the Senator would state what treaty it was. If the Government assumed liability to these claimants, it was by some treaty between France and the United States. Now, what treaty was it? Was it the treaty of 1800 or 1803 or 1819, or what was it?

Mr. BURNHAM. I think the Senator must be aware of what the answer would be to that question without asking the Senator from New Hampshire. But the fact is that in the treaty, where ratifications were exchanged July 31, 1801, as I understand, the United States was claiming for itself indemnity because of spoliations of our individual citizens for a large amount. It was also claiming or asking relief from obligations growing out of the treaty of 1778. Those, in a brief statement, were the claims of the United States.

On the other hand, France, as a counterclaim, was referring to the treaty of 1778, in which we covenanted and guaranteed the possessions of France in America, which included the West Indies. We also guaranteed certain port privileges in this country. The claim of France was that we had not taken care of her possessions in America, in the West Indies; that we had not kept our obligations there, and, instead of keeping for France exclusively the privileges of our ports, we had given like privileges to England. In that way we had, as claimed by France, broken our treaty obligations. That was the claim on the part of France.

Mr. HALE. Let me ask the Senator a question. I know something about the history of all that. Is it not true that there was good ground for the French claim that we had not, in the emergency under which we negotiated the treaty, kept faith with France with reference to her Caribbean Sea possessions? Has the Senator any doubt at all about that?

Mr. BURNHAM. There is no doubt at all about that.

Mr. HALE. The French had an internationally just claim on that account?

Mr. BURNHAM. There is no question about that.

Let me say right upon this point that our representatives in France offered to pay 8,000,000 francs, or $1,600,000, if we could be released from the future obligations we would be under by the treaty of 1778.

To answer the question further, here were these claims, one offsetting the other. Now, when the treaty of 1800, to which I have referred, culminating on July 31, 1801, was completed by the signature of Napoleon, Napoleon added to it the renunciation of each side of the claims of one against the other, and, whatever language may be used to express it, the practical effect of it was that we were renouncing our claims against France for our citizens in consideration of France releasing this country from our national obligations.

So, answering the Senator further, while there is nothing definite in the terms by which this Government assumed the payment of these creditors, yet when this Government took the claims of our citizens and in that way satisfied the national obligations it was under to France, we say there is a moral obligation on the part of this Government to satisfy the claims of the individual citizens.

Mr. HALE. Is not that the crux of the whole matter—that when, by reason of the negotiation, in consideration of the release by France of her claims, which might have been very great, we released the claims of our citizens against France, as a foreign power, we became, by every moral obligation and by every business obligation, responsible to pay our citizens' claims against France which under the negotiations we had abandoned? Is not that the whole substance?

Mr. BURNHAM. That is precisely the case, as I understand.

Mr. CUMMINS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Kansas yield to the Senator from Iowa?

Mr. BRISTOW. Certainly.

Mr. CUMMINS. I am very anxious to be able to vote on this bill understandingly, but I do not understand the history of that negotiation precisely as it has been stated by either the Senator from New Hampshire or the Senator from Maine. In the negotiation of the treaty of 1800, the Senator from New Hampshire will remember that the second article of that treaty

expressly provided that the settlement of all of these questions should be postponed to a future time. It was thus signed by the representatives of the two Governments. It came to the Senate for ratification, and the article to which I have referred was stricken out entirely and nothing substituted in its stead.

But there was a limit fixed upon the duration of the treaty itself—eight years, as I now recall it. The treaty so amended passed back to France, and Napoleon, the First Consul, added as a note to it that his construction of the act of the Senate in striking out the second article was that it constituted a renunciation upon both sides of all the claims held by the one against the other. I do not think, however, so far as I have studied the matter, it can be said that the United States ever assented to Napoleon's construction of the act of the Senate in striking out article 2.

The PRESIDING OFFICER. The Senator will kindly suspend for a moment while the Chair lays before the Senate the unfinished business. It will be stated.

The SECRETARY. A bill (S. 6708) to provide for ocean mail service between the United States and foreign ports and to promote commerce.

Mr. GALLINGER. I ask unanimous consent that the unfinished business be temporarily laid aside.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CUMMINS. May I proceed for a moment longer?

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. CUMMINS. I think it is quite certain the United States never did assent to that construction, because three years later, or less than three years later, in subsequent negotiations resulting in the three treaties of 1803, this matter was again taken up by the two Governments and was dealt with at very great length; that is, the United States again pressed all these claims. That is true, is it not?

Mr. BURNHAM. Not exactly.

Mr. CUMMINS. It is true that a disposition was made at that time of a great many claims which, if the renunciation suggested by Napoleon——

Mr. HALE. Not these claims.

Mr. CUMMINS (continuing). Had been accepted, would not and could not have been pressed. I am only suggesting this, Mr. President, in order to supplement what is really a request made by the Senator from Kansas. We are not going, I assume, to accept as final the judgment of the Court of Claims. There seems to be no disposition here to accept the judgment of the Court of Claims as final with regard to the propriety of paying these claims. We want to pay them if they are just.

Mr. HALE. All of that is left to Congress.

Mr. CUMMINS. We want to pay them if they are just, and there are some of us who do not know very much about the subject. I would have been very glad to have had a statement from some Senator thoroughly familiar with the whole subject, and there is no one more familiar with it than the Senator from New Hampshire. I would have been glad if it had been done originally, and I would be very glad now, if it may be done, if he would take up and state the case from the standpoint of the plaintiff or the claimant and show wherein the United States has become liable to pay these claims, either morally or from the highest legal standpoint.

The Senator from Kansas is attempting an almost impossible task. He is entering upon a defense before the case of the plaintiff has been stated, and he is of course traversing a large amount of ground apparently without knowing precisely what particular act of the United States or negligence of the United States this liability grows out of. I am sure that if the case were stated clearly just how it all came about and just when and how the liability or obligation of the United States attached, the argument of the Senator from Kansas could be very considerably shortened and the field he is trying to cover could be very much restricted.

Mr. HALE. Mr. President, of course this is a very old matter, and it is involved with negotiations by the different parties. Certain things are not disputed. Here were counterclaims, claims of French citizens against the new Republic, claims of our citizens against the French Government, whether republican or monarchical or consular, and which, out of the negotiations, whether by memorandum of the First Consul Napoleon or by assent, were conceded; we gave up our claims against the French Government, and——

Mr. CUMMINS. May I ask the Senator a question?

Mr. HALE. Certainly.

Mr. CUMMINS. Is it not true that France always denied its liability for such claims as are now presented?

Mr. BURNHAM. Not at all.

Mr. HALE. No.

Mr. CUMMINS. That simply indicates how necessary it is that we shall have the matter explained at some length. What I understand is that France always disclaimed any responsibility for these losses.

Mr. HALE. No. It is true that France never admitted the entire range and amount; that it never without commission or power between the two Governments agreed to the amount that we claimed; but France never objected fundamentally to the claim that we made against her Government as her citizens made the claim against our Government. The best we could do under the memorandum of the First Consul was to let it pass and trust to the inevitable, unerring sense of justice in the American people and the American Congress that when we gave up by reason of counternegotiations or claim against the French Government this Republic and our Treasury would fairly consider the question.

Mr. BURNHAM. Mr. President——

The PRESIDING OFFICER. Does the Senator from Kansas yield to the Senator from New Hampshire?

Mr. BRISTOW. Certainly.

Mr. BURNHAM. In answer to some of the questions of the Senator from Iowa, and in answer to questions in another part of this discussion, I should like to read from Mr. Bunn's report with reference to the treaty:

The treaty or convention of September 30, 1800, begins with this language.

"The Premier Consul of the French Republic, in the name of the people of France, and the President of the United States of America, equally desirous to terminate the differences which has arisen between the two States"—

To that I would like to call the attention of Senators who claim that there was a state of war existing between this country and France. In the very treaty or convention at the time it is recited as a matter of difference between the two countries, and there is no reference whatever to a state of war. Reading further:

Thus it will be observed that this was not a treaty or convention to terminate a state of war, but simply "differences which have arisen between the two States."

This treaty or convention was ratified at Washington by John Adams, President, and John Marshall, acting as Secretary of State, on February 18, 1801, after omitting the second article, which they declared "to be expunged and of no force or validity." Afterwards, on July 31, 1801, Napoleon and his ministers, Talleyrand and Maret, approved said convention as follows:

"The Senate of the United States did, by their resolution of February 3, 1801, consent to and advise the ratification of the convention: *Provided*, The second article be expunged, and that the following article be added or inserted: 'It is agreed that the present convention shall be in force for the term of eight years from the time of the exchange of ratifications.'

"Bonaparte, First Consul, in the same of the French people, consented on July 31, 1801"—

This is the date of the exchange of ratification—

"to accept, ratify, and confirm the above convention, with the addition importing that the convention shall be in force for the space of eight years, and with the retrenchment of the second article"—

If Senators will give a little attention, here is the proviso which was inserted by Napoleon.

Mr. HALE. I want the Senator to read that with great distinctness.

Mr. BURNHAM. Yes. It is as follows:

Provided, That by this retrenchment the two States renounce the respective pretensions which are the objects of the said article.

These ratifications having been exchanged at Paris on July 31, 1801, were again submitted to the Senate of the United States, which, on December 19, 1801, declared that it considered the convention fully ratified and returned it to the President for promulgation.

What seems to be the plain fact is that the Senate having before them this proviso accepted it and regarded it as a part of the ratification.

Mr. HALE. And submitted to Napoleon's memorandum?

Mr. BURNHAM. Certainly. That is all.

Mr. CUMMINS. Mr. President, I think there is the very crux of the situation. If it is true that the United States Government accepted the memorandum made by the First Consul by which all these claims were renounced, each in favor of the other, then I can see a very substantial ground for claiming liability, a moral liability, at least, upon the part of the United States for certain claims.

I do not know whether these particular claims fall within that description or not, but I understand that from the very day upon which the ratification of the treaty of 1800 was exchanged the United States kept right along insisting that France should pay these shipowners and cargo owners, who had suffered through the depredations of the French privateers, and that that continued until the whole matter was disposed of in the treaties of 1803. I think that is the very heart of this whole controversy.

Mr. BURNHAM. I want to state that from the examination I have given to this matter, with as much care as I could, I find that in 1803, in the Louisiana Purchase treaty, these claims, which occurred prior to July 31, 1801, and which were involved in the treaty we have been discussing, were expressly excluded; and that in 1803 only those claims against France which occurred subsequent to the date of July 31, 1801, were considered at all in connection with that treaty; that all others were considered as settled by the exchange of ratifications made in July, 1801.

Mr. CUMMINS. Mr. President, there were treaties made in 1803 between these two countries other than the treaty which disposed of the Louisiana Purchase.

Mr. BURNHAM. Yes; there were.

Mr. CUMMINS. The Senator from Massachusetts [Mr. LODGE] is now here. All this began with an earnest desire on my part, and I am sure I speak for a great many other Senators, for some concise history of these claims, so that those who know nothing about the subject, who have never heard the discussion or arguments before, can know upon what basis the United States is asked to pay these claims. The mere loss upon the ocean of merchant ships, even at the hands of a foreign power, does not create a liability upon the part of our Government to pay.

Mr. HALE. No. The Senator from New Hampshire presented that as clearly as it is possible to human understanding.

Mr. CUMMINS. He has stated very definitely that the claim was made under the treaty of 1800.

Mr. HALE. He stated more than that.

Mr. CUMMINS. I understood yesterday it was claimed partially under the treaty of 1831, or the treaty of 1803, or of 1819. So we have a beginning at last, anyhow a statement that it is founded upon the treaty of 1800.

Now, the question is what was done by the United States after that treaty? Did we accept the First Consul's construction of the act of the Senate, or did we still insist that France was bound to pay to citizens of the United States for such losses as had occurred by the misuse of her power during the disturbance from 1793?

Mr. BURNHAM. I think I can say with certainty——

Mr. CUMMINS. I think the Senator from Kansas claims that these are the very losses which were taken account of in 1803.

Mr. LODGE. Mr. President——

Mr. BURNHAM. Just a moment. I will state that in the treaty of 1803 the claims that arose prior to the convention of July, 1801, were not considered, and they never were considered afterwards. In the treaty of 1831 these claims were not put in, and they never were called up by this Government against France afterwards.

Mr. LODGE. Mr. President, I do not desire to interrupt the Senator from Kansas. I can wait just as well until he closes, but I would be glad to make a brief statement about those treaties, if the Senator from Iowa desires it. Shall I wait until the Senator from Kansas closes?

Mr. BRISTOW. I yield to the Senator from Massachusetts for that purpose very gladly.

Mr. LODGE. Mr. President, these spoliations occurred during the trouble between this country and France just at the close of the eighteenth century. There was no declared war between the two countries, but there was almost a state of war. We had two frigate actions, in which the American frigate under Truxtun won both fights, but there never was a declaration of war. France, of course, was liable for these losses, and we made a claim against France for them.

There was France's claim against us, the guaranty we had given in the treaty of 1778 for her possessions in the West India Islands, which were then assailed by Great Britain, and we had refused to interfere or to carry out those treaties. We refused to make good. Both were put over by the second article of the treaty of 1800. In consideration of our putting over our claims France agreed to put over her claims under the guaranty.

The Senate advised and consented to the ratification of the treaty provided this article—

Article 2—

be expunged and in its place the following article be inserted:

"It is agreed that the present convention shall be in force for the term of eight years from the time of exchange of ratification."

That left their claim against us and our claim against them in statu quo. That was the proposition of the Senate.

Napoleon thereupon consented to "accept, ratify, and confirm" the convention, with an addition importing that it should be in force for the space of eight years, and with the retrenchment of the second article:

Provided, That by this retrenchment the two States renounce the respective pretensions which are the object of the said article.

That is, we renounced our claims against France for the spoliations, and she renounced her claim against us for our failure to maintain the guaranties of the treaty of 1778.

The treaty of 1803 was limited to captures in which the council of prizes shall have ordered restitution, it being well understood that the claimant can not have recourse to the Government of the United States otherwise than he might have had to the Government of the French Republic, and then only in case of "insufficiency of the captors."

The treaty of 1803 applied only, as the Senator from New Hampshire has said, to those cases where restitution had been made by the French courts, and which had occurred since 1800.

The treaty of 1819 was the treaty with Spain, and in that treaty not only Spain made restitution for spoliations committed by her cruisers, but for prizes brought by French cruisers into her ports during the same period—that is, those people who had suffered from the French spoliations prior to 1800, but whose vessels had been taken into Spanish ports, got indemnity from the Spanish Government.

The treaty of 1831, which gave us 25,000,000 francs, dealt with the spoliations and losses which had occurred in the Napoleonic period subsequently, under what were known as the Milan and Berlin decrees. Therefore, our people, who had suffered from the spoliations from France and whose vessels had not been taken into a Spanish port, were left to the mercy of their own Government, who had relieved itself from its undoubted liability under the guaranties of the treaty of 1778 in giving up these claims and allowing them both to pass unacted upon by the treaty of 1800.

Mr. Pickering, who was Secretary of State under the first two Presidents, said:

It would seem that the merchants have an equitable claim for indemnity from the United States. * * * The relinquishment by our Government having been made in consideration that the French Government relinquished its demands for a renewal of the old treaties, then it seems clear that, as our Government applied the merchants' property to buy off those old treaties, the sums so applied should be reimbursed.

Mr. Pickering, as is known, was Secretary of State under Washington and subsequently under Adams. He was succeeded by John Marshall, who was Secretary of State at the time of these spoliations. Chief Justice Marshall, Chief Justice at the time he made the statement I am about to read, was Secretary of State at the time of the spoliations.

I ought to say first that Henry Clay in the Meade case, in which his opinion was given in 1821, five years prior to his report on French spoliations, made a report which is cited in the report of the committee. He said:

That while a country might not be bound to go to war in support of the rights of its citizens, and while a treaty extinction of those rights is probably binding, it appears—

"That the rule of equity furnished by our Constitution, and which provides that private property shall not be taken for public use without just compensation, applies and entitles the injured citizen to consider his own country a substitute for the foreign power."

In this conclusion Chief Justice Marshall strongly concurred, saying to Mr. Preston that—

Having been connected with the events of the period and conversant with the circumstances under which the claims arose, he was, from his own knowledge, satisfied that there was the strongest obligation on the Government to compensate the sufferers by the French spoliations.

These are cited in Mr. Clayton's speech in 1846, and Chief Justice Marshall also repeated to Mr. Leigh distinctly and positively "that the United States ought to make payment of these claims."

I take those extracts from the very elaborate opinion delivered by Judge Davis, of the Court of Claims, in which he went into the entire history of the claims and in which on this question of 1803 he discussed at length the point which has been raised by the Senator from Iowa. The court held that the treaty of 1803 had no bearing whatever on these claims and did not debar them at all, that they were different claims, and Judge Davis then held, as the court held unanimously, the validity of these claims, resting them on the ground that the United States, as the Secretary of State, Mr. Pickering, had said, by these merchants' losses had bought off the French claims against us.

Mr. HALE. I agree with the Senator. That tells the whole story. In the negotiation our Government used these claims to buy up an arrangement with France, by which she yielded her claims, and they put them in as the assets of the United States in that negotiation.

Mr. LODGE. France had a very strong claim against us, because there was no question of the guaranty in the treaty of 1778, which was the famous treaty of alliance, of so much value to us in the Revolution. We had declined to carry out the terms of that treaty, and Napoleon agreed, if we would allow these claims to go, to cease to insist upon any reimbursement to France under the guaranty.

Our citizens, there being no state of war, were entitled to the protection of their Government against these illegal seizures by French cruisers. There can be no doubt of that. We did exactly as we have done again and again; we presented the claims of our citizens. We presented them against England and recovered them before the Geneva tribunal. In the treaty with Spain one of the provisions was that we should assume the claims of our citizens against Spain. We did assume them, and we have the Spanish Claims Commission. All those claims were presented, carefully examined, and have been settled by this Government.

Mr. HALE. And not resisted?

Mr. LODGE. And not resisted. We did precisely the same thing with France. We took the losses of these merchants, great for those days, and used them as a set-off against the claim which France had made against us.

Mr. PAYNTER. The Senator from Massachusetts, then, regards that as equivalent to an acknowledgment on the part of this Government of its liability for these claims or that it was in fact such an acknowledgment?

Mr. LODGE. Yes; of course. I would say to the Senator that I do regard it as an equivalent, and at one stage in the negotiations we offered to pay France $8,000,000 to be released from the claims she had under the West Indian guaranty.

Mr. PAYNTER. Was the acknowledgment by our Government of liability cancellation of the liability of France?

Mr. LODGE. Certainly it was; undoubtedly.

Mr. BRISTOW. Mr. President, I am very glad to have the Senators interested in this bill state definitely the treaty under which they claim the liability was incurred. I now proceed to read from the message of President Pierce bearing directly upon the point that has been discussed by the senior Senator from Massachusetts. I should like to invite the attention of the Senator from Kentucky [Mr. PAYNTER], as well as the attention of the Senator from Massachusetts [Mr. LODGE], and the Senator from Maine [Mr. HALE], to a discussion of this very point by President Pierce in his veto message of 1855.

Mr. LODGE. I am familiar with that, I will say to the Senator, and I do not agree with President Pierce. I agree with the court.

Mr. BRISTOW. Does the Senator agree with the Court of Claims?

Mr. LODGE. I agree with the opinion of the Court of Claims, with the view of Chief Justice Marshall, and with what seems to me the clear case on historical facts. I have not, perhaps, that reverence for the opinion of Mr. Franklin Pierce that I ought to have.

Mr. CRAWFORD. Mr. President——

The VICE PRESIDENT. Does the Senator from Kansas yield to the Senator from South Dakota?

Mr. BRISTOW. I do.

Mr. CRAWFORD. Mr. President, I ask if it is not a fact that in the case of the veto, both by Mr. Polk and by Mr. Pierce, a majority of the Members of Congress voted not to sustain the veto, although not sufficient in number to override it.

Mr. BRISTOW. The veto stood, and the bill was not passed over the veto.

Mr. CRAWFORD. But is not what I have stated a fact?

Mr. BRISTOW. It may be, but it is a matter of little consequence. The Senator from Massachusetts plainly states that he disagrees with President Pierce. So I want to submit to the Senate the arguments of President Pierce for vetoing that bill, and let them stand against the arguments that have been made by the Senator from Massachusetts. I do this because Mr. Pierce was 55 years nearer the scenes of action out of which these claims grew, and because of his eminent position, and he being himself a native of New England, certainly the statements in his message should be very strong and commanding evidence against the justice of these claims. Mr. Pierce said:

> If, as was affirmed on all hands, the convention of 1803 was intended to close all questions between the Governments of France and the United States, and 20,000,000 francs were set apart as a sum which might exceed, but could not fall short of, the debts due by France to the citizens of the United States, how are we to reconcile the claim now presented with the estimates made by those who were of the time and immediately connected with the events, and whose intelligence and integrity have, in no small degree, contributed to the character and prosperity of the country in which we live? Is it rational to assume that the claimants, who now present themselves for indemnity by the United States, represent debts which would have been admitted and paid by France but for the intervention of the United States? And is it possible to escape from the effect of the voluminous evidence tending to establish the fact that France resisted all these claims; that it was only after long and skillful negotiation that the agents of the United States obtained the recognition of such of the claims as were provided for in the conventions of 1800 and 1803? And is not this conclusive against any pretensions of possible success on the part of the claimants, if left unaided, to make their applications to France, that the only debts due to American citizens, which have been paid by France, are those which were assumed by the United States as part of the consideration in the purchase of Louisiana?
>
> There is little which is creditable either to the judgment or patriotism of those of our fellow citizens who at this day arraign the justice, the fidelity, or love of country of the men who founded the Republic, in representing them as having bartered away the property of individuals to escape from public obligations, and then to have withheld from them just compensation.

Mr. JONES. Mr. President——

The VICE PRESIDENT. Does the Senator from Kansas yield to the Senator from Washington?

Mr. BRISTOW. I do.

Mr. JONES. I suggest the absence of a quorum.

The VICE PRESIDENT. The absence of a quorum being suggested, the Secretary will call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Bacon	Crane	Kean	Shively
Bankhead	Crawford	Lorimer	Smith, Md.
Borah	Culberson	McCumber	Smoot
Bourne	Cullom	Martin	Stephenson
Brandegee	Dillingham	Money	Swanson
Briggs	du Pont	Nixon	Taliaferro
Bristow	Fletcher	Oliver	Terrell
Brown	Flint	Overman	Warner
Burkett	Foster	Page	Warren
Burnham	Frazier	Penrose	Wetmore
Burton	Gallinger	Percy	Young
Carter	Gamble	Perkins	
Clark, Wyo.	Heyburn	Root	
Clarke, Ark.	Jones	Scott	

The VICE PRESIDENT. Fifty-three Senators have answered to the roll call. A quorum of the Senate is present. The Senator from Kansas will proceed.

Mr. BRISTOW. President Pierce, continuing, said:

> It has been gratifying to me, in tracing the history of these claims, to find that ample evidence exists to refute an accusation which would impeach the purity, the justice, and the magnanimity of the illustrious men who guided and controlled the early destinies of the Republic.
>
> I pass from this review of the history of the subject, and, omitting many substantial objections to these claims, proceed to examine somewhat more closely the only grounds upon which they can by possibility be maintained.
>
> Before entering on this it may be proper to state distinctly certain propositions which, it is admitted on all hands, are essential to prove the obligations of the Government:
>
> First. That at the date of the treaty of September 30, 1800, these claims were valid and subsisting as against France.
>
> Second. That they were released or extinguished by the United States in that treaty and by the manner of its ratification.
>
> Third. That they were so released or extinguished for a consideration valuable to the Government, but in which the claimants had no more interest than any other citizens.

Mr. Pierce then continues to discuss the history of the relations between the two Republics, and after that discussion and citing some paragraphs from the treaty, he says:

> By the second article—

The one that has been discussed by the Senator from Massachusetts [Mr. LODGE]—

> By the second article, as it originally stood, neither Republic had relinquished its existing rights or pretensions, either as to other previous treaties or the indemnities mutually due or claimed, but only deferred the consideration of them to a convenient time. By the amendment of the Senate of the United States that convenient time, instead of being left indefinite, was fixed at eight years; but no right or pretension of either party was surrendered or abandoned.
>
> If the Senate erred in assuming that the proviso added by the First Consul did not affect the question, then the transaction would amount to nothing more than to have raised a new question, to be disposed of on resuming the negotiations, namely, the question whether the proviso of the First Consul did or not modify or impair the effect of the convention as it had been ratified by the Senate.
>
> That such, and such only, was the true meaning and effect of the transaction; that it was not, and was not intended to be, a relinquishment by the United States of any existing claim on France—

Now, I want to call the attention of the chairman of the committee, the Senator in charge of the bill [Mr. BURNHAM], especially to this statement of fact by President Pierce. Mr. Pierce says:

> and especially that it was not an abandonment of any claims of individual citizens, nor the set off of these against any conceded national obligations to France, is shown by the fact that President Jefferson did at once resume and prosecute to successful conclusion negotiations to obtain from France indemnification for the claims of citizens of the United States existing at the date of that convention—

Mr. Pierce makes the positive statement that the United States did not consider these claims settled or assumed or that France was relieved in any way of the obligation of paying them, because at once he proceeded to press them for settlement. If President Jefferson, who occupied that office immediately at the time this controversy was going on, by his official acts conclusively demonstrated that the Government did not consider that France was relieved, it seems to me that we should take that as conclusive evidence that she was not. He certainly knew more about it then than some representative of the claimants would a half century afterwards.

Continuing, Mr. Pierce says:

For on the 30th of April, 1803, three treaties were concluded at Paris between the United States of America and the French Republic, one of which embraced the cession of Louisiana, another stipulated for the payment of 60,000,000 francs by the United States to France, and a third provided that, for the satisfaction of sums due by France to citizens of the United States at the conclusion of the convention of September 30, 1800, and in express compliance with the second and fifth articles thereof, a further sum of 20,000,000 francs should be appropriated and paid by the United States.

Mr. Pierce then goes into a discussion of the different articles of the treaty, which I ask to insert in the RECORD, but will omit reading because the discussion is rather long.

The VICE PRESIDENT. Without objection, permission is granted.

The matter referred to is as follows:

In the preamble to the first of these treaties, which ceded Louisiana, it is set forth that—

"The President of the United States of America and the First Consul of the French Republic, in the name of the French people, desiring to remove all source of misunderstanding relative to objects of discussion mentioned in the second and fifth articles of the convention of the 8th Vendémiaire, ninth year (30th September, 1800), relative to the rights claimed by the United States in virtue of the treaty concluded at Madrid the 27th of October, 1795, between His Catholic Majesty and the said United States, and willing to strengthen the union and friendship which at the time of the said convention was happily reestablished between the two nations, have respectively named their plenipotentiaries, * * * who * * * have agreed to the following articles."

Here is the most distinct and categorical declaration of the two Governments that the matters of claim in the second article of the convention of 1800 had not been ceded away, relinquished, or set off, but they were still subsisting subjects of demand against France. The same declaration appears in equally emphatic language in the third of these treaties, bearing the same date, the preamble of which recites that—

"The President of the United States of America and the First Consul of the French Republic, in the name of the French people, having by a treaty of this date terminated all difficulties relative to Louisiana and established on a solid foundation the friendship which unites the two nations, and being desirous, in compliance with the second and fifth articles of the convention of the 8th Vendémiaire, ninth year of the French Republic (30th September, 1800), to secure the payment of the sums due by France to the citizens of the United States, have appointed plenipotentiaries"—

Who agreed to the following among other articles:

"ART. I. The debts due by France to citizens of the United States, contracted before the 8th Vendémiaire, ninth year of the French Republic (30th September, 1800), shall be paid according to the following regulations, with interest at 6 per cent, to commence from the periods when the accounts and vouchers were presented to the French Government.

"ART. II. The debts provided for by the preceding article are those whose result is comprised in the conjectural note annexed to the present convention, and which, with the interest, can not exceed the sum of 20,000,000 francs. The claims comprised in the said note which fall within the exceptions of the following articles shall not be admitted to the benefit of this provision.

* * * * * * *

"ART. IV. It is expressly agreed that the preceding articles shall comprehend no debts but such as are due to citizens of the United States who have been, and are yet, creditors of France, for supplies, for embargoes, and prizes made at sea, in which the appeal has been properly lodged within the time mentioned in the said convention, 8th Vendémiaire, ninth year (30th September, 1800).

"ART. V. The preceding articles shall apply only, first, to captures of which the council of prizes shall have ordered restitution, it being well understood that the claimant can not have recourse to the United States otherwise than he might have had to the Government of the French Republic, and only in case of insufficiency of the captors; second, the debts mentioned in the said fifth article of the convention, contracted before the 8th Vendémiaire, ninth year (September 30, 1800), the payment of which has been heretofore claimed of the actual Government of France, and for which the creditors have a right to the protection of the United States; the said fifth article does not comprehend prizes whose condemnation has been, or shall be, confirmed. It is the express intention of the contracting parties not to extend the benefit of the present convention to reclamations of American citizens who shall have established houses of commerce in France, England, or other countries than the United States, in partnership with foreigners, and who, by that reason and the nature of their commerce, ought to be regarded as domiciliated in the places where such houses exist. All agreements and bargains concerning merchandise, which shall not be the property of American citizens, are equally excepted from the benefit of the said convention, saving, however, to such persons their claims in like manner as if this treaty had not been made.

* * * * * * * * *

"ART. XII. In case of claims for debts contracted by the Government of France with citizens of the United States since the 8th Vendémiaire, ninth year (30th September, 1800), not being comprised in this convention, may be pursued, and the payment demanded in the same manner as if it had not been made."

Other articles of the treaty provide for the appointment of agents to liquidate the claims intended to be secured, and for the payment of them as allowed at the Treasury of the United States. The following is the concluding clause of the tenth article:

"The rejection of any claim shall have no other effect than to exempt the United States from the payment of it, the French Government reserving to itself the right to decide definitely on such claim, so far as it concerns itself."

Mr. BRISTOW. After the matter which I have asked to be inserted, Mr. Pierce continued:

Now, from the provisions of the treaties thus collated the following deductions undeniably follow, namely—

The collation I have inserted in the RECORD, and I would invite Senators to examine it carefully, because these deductions follow absolutely as a logical sequence—

First. Neither the second article of the convention of 1800, as it originally stood, nor the retrenchment of that article, nor the proviso in the ratification by the First Consul, nor the action of the Senate of the United States thereon, was regarded by either France or the United States as the renouncement of any claims of American citizens against France.

Second. On the contrary, in the treaties of 1803 the two Governments took up the question precisely where it was left on the day of the signature of that of 1800, without suggestion on the part of France that the claims of our citizens were excluded by the retrenchment of the second article or the note of the First Consul, and proceeded to make ample provision for such as France could be induced to admit were justly due, and they were accordingly discharged in full, with interest, by the United States in the stead and behalf of France.

Third. The United States, not having admitted in the convention of 1800 that they were under any obligations to France by reason of the abrogation of the treaties of 1778 and 1788, persevered in this view of the question by the tenor of the treaties of 1803, and therefore had no such national obligation to discharge, and did not, either in purpose or in fact, at any time undertake to discharge themselves from any such obligation at the expense and with the property of individual citizens of the United States.

Fourth. By the treaties of 1803 the United States obtained from France the acknowledgment and payment, as part of the indemnity for the cession of Louisiana, of claims of citizens of the United States for spoliations, so far as France would admit her liability in the premises; but even then the United States did not relinquish any claim of American citizens not provided for by those treaties; so far from it, to the honor of France be it remembered, she expressly reserved to herself the right to reconsider any rejected claims of citizens of the United States.

Fifth. As to claims of citizens of the United States against France, which had been the subject of controversy between the two countries prior to the signature of the convention of 1800, and the further consideration of which was reserved for a more convenient time by the second article of that convention, for these claims, and these only, provision was made in the treaties of 1803, all other claims being expressly excluded by them from their scope and purview.

It is not to be overlooked, though not necessary to the conclusion, that by the convention between France and the United States of the 4th of July, 1831, complete provision was made for the liquidation, discharge, and payment on both sides of all claims of citizens of either against the other for unlawful seizures, captures, sequestrations, or destruction of the vessels, cargoes, or other property, without any limitation of time, so as in terms to run back to the date of the last preceding settlement, at least to that of 1803, if not to the commencement of our national relations with France.

Then President Pierce, in closing his message, says:

This review of the successive treaties between France and the United States has brought my mind to the undoubting conviction that while the United States have in the most ample and the completest manner discharged their duty toward such of their citizens as may have been at any time aggrieved by acts of the French Government, so also France has honorably discharged herself of all obligations in the premises toward the United States. To concede what this bill assumes would be to impute undeserved reproach both to France and to the United States.

I am, of course, aware that the bill proposes only to provide indemnification for such valid claims of citizens of the United States against France as shall not have been stipulated for and embraced in any of the treaties enumerated. But in excluding all such claims it excludes all, in fact, for which, during the negotiations, France could be persuaded to agree that she was in anywise liable to the United States or our citizens. What remains? And for what is five millions appropriated? In view of what has been said there would seem to be no ground on which to raise a liability of the United States, unless it be the assumption that the United States are to be considered the insurer and the guarantor of all claims, of whatever nature, which any individual citizen may have against a foreign nation.

It seems to me that that concluding paragraph states the facts exactly as they are. If there is any justice in these claims it must rest upon the ground that the United States Government is obliged to indemnify every one of its citizens who suffers a loss by a foreign country. There is not a line of direct evidence to be found anywhere in any treaty that this Government has assumed a responsibility for these claims. All of the contention is based upon an inference drawn from the note added by the First Consul in approving the treaty as a result of the striking out of article 2.

Mr. GALLINGER. Mr. President——

The VICE PRESIDENT. Does the Senator from Kansas yield to the Senator from New Hampshire?

Mr. BRISTOW. I do.

Mr. GALLINGER. I will ask the Senator if it does not trouble him a little, intellectually at least, when he stops to reflect that 59 favorable reports have been made to the Congress of the United States regarding these claims. Some of the most eminent lawyers and some of the greatest statesmen the country has produced, covering a period almost from the time that these claims were fresh up to the present moment, have made favorable reports, saying that the Government was at least morally bound to pay these claims, and recommending their payment. It troubles me very much.

Mr. BRISTOW. Well, I would suggest that it was almost 50 years before the eminent gentlemen referred to could induce an American Congress to pass with favor these claims. The Congresses that were composed of men familiar with that period of our history in which these claims arose universally rejected them. It is true that committees at times reported favorably, but up until 1846 there was not a Congress of the United States that could be induced to pass with favor upon these claims, and in 1818 the Senate, by a resolution, specifically declared them not valid.

Mr. GALLINGER. Mr. President, will the Senator permit me further?

The VICE PRESIDENT. Does the Senator from Kansas yield further?

Mr. BRISTOW. I do.

Mr. GALLINGER. The only claim that I ever succeeded in getting through Congress was for the sum of $750. The Government owed it just as much as the Senator would owe me if he *made a purchase* from me and I did not deceive him. Yet it took that poor man 10 years to get that claim reported favorably and passed by the Congress of the United States, and the day it passed he died in the city of Washington and was buried by charity. He was a citizen of my city. I do not think it is a remarkable thing that a claim against the Government has not been paid even for half a century.

As I remarked yesterday, we are paying claims growing out of the Civil War on this bill. If they are just claims, they ought to have been paid long ago, but I am going to vote for them for the reason that the court has said they ought to be paid and that the committee has examined them and said they ought to be paid. The fact that a claim against the Government of the United States is old is to my mind a reason why it ought to be paid rather than a reason why it ought to be rejected, because the Government of the United States does not deal fairly with its citizens in these matters. If there is due a tenth part of the amount that we propose to give to the survivors of the men who lost their property by French cruisers they will not get any more than they ought to get or would get if interest was allowed to them on the amount of money that ought to have been paid to them long ago, according to the opinions of all these great committees and the great men who have reported in their favor.

I repeat that the fact that a claim is stale, or that the Government has repudiated its obligations, is not any reason for denying justice to the citizen.

Mr. BRISTOW. The Senator uses the word "repudiation" with great freedom. I think the Government of the United States is fair to its citizens. I do not believe the Government of the United States repudiates its debts. No one knows better than the Senator from New Hampshire that a claim against the Government is pressed from year to year, from Congress to Congress, from generation to generation. That claim and all of the evidence in its favor are kept alive, and it accumulates as the years go by. There is some one behind it with a personal interest. The Government's evidence in a controversy of that kind grows *dimmer*. Men with a knowledge of the facts pass out of public life and evidence which they had is lost. As time goes on the evidence against the claim grows less and the evidence in its favor is accumulated, because there is direct personal interest on one side keeping it alive, while on the other there is not. These are well-known facts, with which every Member of Congress is familiar if he has had any experience in connection with these claims.

Now, on the point to which the Senator from New Hampshire has been speaking, I wish to read another veto message. As I have said, it was about 50 years before any Congress passed with favor upon these claims. Not only were they not considered with favor until all the men who had been alive and in active life during the period in which they originated were gone, but three Presidents, after the bills began to pass the Congress, felt it their duty to veto them. I have read the veto message of President Polk, I have read the veto message of President Pierce, and I now proceed to read the veto message of President Cleveland:

Mr. GALLINGER. Mr. President——

The VICE PRESIDENT. Does the Senator from Kansas yield to the Senator from New Hampshire?

Mr. BRISTOW. I do.

Mr. GALLINGER. I am entirely familiar with that veto message. I have read it carefully. I was not so familiar with the veto message of the only President that New Hampshire has furnished the Nation. But I will ask the Senator if possibly the opinions of Rufus Choate, Daniel Webster, Edward Everett, and a long list of other very distinguished citizens of this Republic, masters in the profession of law, should not have as much weight as those of Franklin Pierce or Mr. Polk or Mr. Cleveland? The fact is those three veto messages are opposed to the opinions, 50 times repeated, of men of quite as great eminence in the profession of the law as those Presidents could possibly claim, and I think we ought not to be swept off of our feet by the simple fact that there have been during the last 100 years or more three veto messages of these claims. It does not impress me that we ought to give as much consideration to them as the Senator from Kansas seems to be doing.

Mr. BRISTOW. It is a well-known fact that Presidents hesitate to veto bills that pass the two Houses. They are not vetoed usually. Vetoes are very rare; only resorted to in exceptional cases.

Mr. GALLINGER. That was not true of the President whose opinion the Senator is just going to present to the Senate. He did not hesitate to veto bills. He vetoed them by the wholesale.

Mr. BRISTOW. As to the eminent authorities to which the Senator from New Hampshire has referred, it depends somewhat upon the attitude of a man toward a case as to the weight you would give to his argument. I think in a legislative matter the President of the United States, charged with the responsibilities of that great office, in considering whether or not he shall veto a bill, would weigh every phase, both sides of the controversy, and attempt to come to a deliberate, just, and judicial conclusion.

One who is advocating a bill, who is pressing a measure before the Senate, constructs his argument, as a rule—it is natural in human controversies—so as to strengthen the side of the case that he is on. That is true, if you will read the briefs that have been prepared in behalf of these claims. I have here a book prepared by the representatives of the insurance companies, printed at the Government Printing Office, a very elaborate opinion, I suppose circulated under the frank of the United States Government. It is the brief and argument of the claimants who are asking that the insurance policies issued by the insurance companies be paid, and the Congress will hear from this in the future, and there will be the same persistence in behalf of the payment of these claims for insurance that are not incorporated in this bill. This campaign will continue on from generation to generation, growing, as Mr. Cleveland says in this message, as the years go by, because of the accumulation of parties interested.

Mr. GALLINGER. Mr. President——

The VICE PRESIDENT. Does the Senator from Kansas yield to the Senator from New Hampshire?

Mr. BRISTOW. I do.

Mr. GALLINGER. I presume the Senator from Kansas has not overlooked the fact that when President Polk's veto message came to this body a very large majority of the Senators disagreed with Mr. Polk, although there was not quite a two-thirds vote to overthrow the veto. And when President Pierce's veto message went to the House of Representatives it was likewise opposed by a very large majority, almost two-thirds of that body.

In reference to President Pierce's veto, he having been a New Hampshire man, I think I ought to call attention to the fact that during his administration he vetoed every bill which passed the Congress for internal improvements, improvements of rivers and harbors, and all that sort of thing. He seemed to be somewhat addicted to the veto habit, as Mr. Cleveland was after him.

Mr. BRISTOW. I am glad it is not necessary for those who are opposing this bill to cast any reflections upon the integrity, or the intelligence, or the patriotism, or the devotion to duty of the men of the early period of our country's history.

Mr. GALLINGER. O Mr. President, I have not done that. It was not in the early history of our country that President Pierce vetoed this bill. It is within my memory, at least. What I say is that his view was not shared by a majority of the House, and President Polk's view was not shared by a majority of the Senate.

Mr. BRISTOW. As the Senator from New Hampshire has suggested, President Cleveland did not hesitate to stamp his disapproval on a measure that passed the two Houses and to exercise his constitutional privilege of vetoing it.

But I want to call the attention of the Senate to his veto message. I do that because I do not think anybody will question the accuracy of the facts he states. They might differ with him in political theories; they might not admire him or his methods as the Chief Executive of the Nation, but nobody will deny that he stated with accuracy and precision facts; and I would like the Senate to consider the facts that he presents, as well as the theories and opinions he offers.

Mr. Cleveland said:

> The bill appropriates $1,027,314.09 for a partial payment upon claims which originated in depredations upon our commerce by French cruisers and vessels during the closing years of the last century. They have become quite familiar to those having congressional experience, as they have been pressed for recognition and payment, with occasional intervals of repose, for nearly 100 years.
>
> These claims are based upon the allegations that France, being at war with England, seized and condemned many American vessels and cargoes in violation of the rules of international law and treaty provisions and contrary to the duty she owed to our country as a neutral power and to our citizens; that by reason of these acts claims arose in favor of such of our citizens as were damnified against the French Nation, which claims our Government attempted to enforce, and that in concluding a treaty with France in the year 1800 these claims were abandoned or reliquished in consideration of the relinquishment of certain claims which France charged against us.

Upon these statements it is insisted by those interested that we as a Nation having reaped a benefit in our escape from these French demands against us through the abandonment of the claims of our citizens against France, the Government became equitably bound as between itself and its citizens to pay the claims thus reliquished.

I do not understand it to be asserted that there exists any legal liability against the Government on account of its relation to these claims. At the term of the Supreme Court just finished the Chief Justice, in an opinion concerning them and the action of Congress in appropriating for their payment, said:

"We think that payments thus prescribed to be made were purposely brought within the category of payments by way of gratuity—payments of grace and not of right."

That quotation is from Chief Justice Fuller, and it was read yesterday by the senior Senator from Georgia [Mr. BACON].

From the time the plan was conceived to charge the Government with the payment of these claims they have abided in the atmosphere of controversy. Every proposition presented in their support has been stoutly disputed and every inference suggested in their favor has been promptly challenged.

Thus, inasmuch as it must, I think, be conceded that if a state of war existed between our country and France at the time these depredations were committed, our Government was not justified in claiming indemnity for our citizens, it is asserted that we were at the time actually engaged in war with the French nation. This position seems to be sustained by an opinion of the Attorney General of the United States, written in 1798, and by a number of decisions of the Supreme Court delivered soon after that time.

We had certainly abrogated treaties with France and our cruisers and armed ships were roaming the seas capturing her vessels and property.

So, also, when it is asserted that the validity of these claims was acknowledged in the treaty negotiations by the representatives of France, their declarations to a contrary purport are exhibited.

And when it is alleged that the abandonment of these claims against France was in consideration of great benefits to the Government, it is as confidently alleged that they were in point of fact abandoned because their enforcement was hopeless, and that even if any benefit really accrued to us by insistence upon their settlement in the course of diplomatic negotiations, such result gave no pretext for taxing the Government with liability to the claimants.

Without noticing other considerations and contentions arising from the alleged origin of these claims, a brief reference to their treatment in the past and the development of their presentation may be useful and pertinent.

I am sorry the Senator from New Hampshire [Mr. GALLINGER] is not here, because this is a part of the message which I think should impress him:

It is, I believe, somewhat the fashion in interested quarters to speak of the failure by the Government to pay these claims as such neglect as amounts to repudiation and a denial of justice to citizens who have suffered. Of course the original claimants have for years been beyond the reach of relief; but as their descendants in each generation become more numerous the volume of advocacy, importunity, and accusation correspondingly increases. If injustice has been done in the refusal of these claims, it began early in the present century, and may be charged against men then in public life more conversant than we can be with the facts involved and whose honesty and sense of right out to be secure from suspicion.

As early as 1802 a committee of the House of Representatives reported the facts connected with these claims, but apparently without recommendation. No action was taken on the report. In 1803 a resolution declaring that indemnity ought to be paid was negatived by a vote of the same body.

In 1802 it was refused consideration, and in 1803 Congress refused to declare that the claims were valid or ought to be paid.

A favorable committee report was made in 1807, but it seems that no legislative action resulted. In 1818 an adverse report was made to the Senate, followed by the passage of a resolution declaring "that the relief asked by the memorialists and petitioners ought not to be granted."

The Senate went so far as to declare that these claims were not valid and ought not to be granted, hoping, I suppose, by that positive action to put a stop to the controversy or the importunity of the claimants.

In 1822 and again in 1824 adverse committee reports on the subject were made to the House, concluding with similar resolutions.

Time and again Congress resolved, when Members of Congress were personally familiar with the facts, that these claims were not justified.

The presumption against these claims arising from such unfavorable reports and resolutions and from the failure of Congress to provide for their payment at a time so near the events upon which they are based can not be destroyed by the interested cry of injustice and neglect of the rights of our citizens.

Until 1846 these claims were from time to time pressed upon the attention of Congress with varying fortunes, but never with favorable legislative action. In that year, however, a bill was passed for their ascertainment and satisfaction, and $5,000,000 were appropriated for their payment. This bill was vetoed by President Polk, who declared that he could "perceive no legal or equitable ground upon which this large appropriation can rest." This veto was sustained by the House of Representatives.

Nine years afterwards, and in 1855, another bill was passed similar to the one last mentioned, and appropriating for the settlement of these claims a like sum of money. This bill was also vetoed, President Pierce concluding a thorough discussion of its demerits with these words:

"In view of what has been said there would seem to be no ground on which to raise a liability of the United States unless it be the assumption that the United States are to be considered the insurer and the guarantor of all claims, of whatever nature, which any individual citizen may have against a foreign nation."

This veto was also sustained by the House of Representatives.

I think it will be found that in all bills proposed in former times for the payment of these claims the sum to be appropriated for that purpose did not exceed $5,000,000. It is now estimated that those already passed upon, with those still pending for examination in the Court of Claims, may amount to $25,000,000. This indicates either that the actual sufferers or those nearer to them in time and blood than the present claimants underestimated their losses, or that there has been a great development in the manner of their presentation. Notwithstanding persistent efforts to secure payment from the Government and the importunity of those interested, no appropriation has ever been made for that purpose except a little more than $1,300,000, which was placed in the general deficiency bill in the very last hours of the session of Congress on March 3, 1891.

In the long list of beneficiaries who are provided for in the bill now before me on account of these claims 152 represent the owners of ships and their cargoes and 186 those who lost as insurers of such vessels or cargoes.

I wish to call attention to this particular language, as it relates to the claim for insurance, because over $300,000, if I remember correctly, of the amount in this bill goes to pay underwriters or insurers on these vessels and their cargoes.

I am going to read an extract from the policy of these insurance companies or these underwriters.

[At this point Mr. BRISTOW yielded for an executive session.]

Friday, December 16, 1910.

Mr. BRISTOW. Mr. President, there seems to be a widespread belief that there is money in the United States Treasury to pay these claims, money which was paid in there by the French a century ago, and kept there during all this time, the United States refusing to pay it out. That is the impression that has been circulated by those who hope to benefit by this legislation. I have here a letter which this morning I received in the mail. It reads as follows:

I see that the matter of the French spoliation claims is again before Congress. I have always heard that my mother's grandfather lost heavily by the capture of ships and merchandise and that the money was paid to the United States Government for reimbursement, which the Government has never done; in other words, is it any more honest for the Government to keep money that belongs to other people than it is for individuals to do so?

Mr. President, I think it is due to the people of the United States that those who are pressing these claims should at least state the truth in regard to them, so that such a slander as this upon the United States Government would be stopped. There is no money in the United States Treasury to pay these claims. There never has been any money in the United States Treasury to pay them. They were never admitted by France as legitimate claims against that Government. This whole controversy hinges upon a single sentence in a note added to a treaty by Napoleon, which has been construed by those who want the money to mean that the French Government has been released from a number of claims that otherwise they would have been held for, and that by virtue of that release this Government, at least indirectly, assumed the responsibility for the payment. That is the only basis for this entire controversy, which has lasted for a hundred years.

I was reading yesterday, when the hour of adjournment arrived, from the veto message of President Cleveland. I had just reached that part of the message where he was dealing with the claims for insurance. I want to state that, of the amount of $842,000 and more that is to be appropriated by this bill to pay the French spoliation claims, $287,164.49 is for insurance, and that the underwriters, whether they were individuals or companies, partnerships or corporations, charged for the premium on those insurance policies rates ranging from 10 to 33⅓ per cent—exorbitant and unusual charges for premiums. I want now to read to you a paragraph from the policy, showing the risk that these companies voluntarily assumed and for which they were sometimes paid one-third the value of the ship or the cargo.

Mr. Cleveland says:

In the long list of beneficiaries who are provided for in the bill now before me on account of these claims, 152 represent the owners of ships and their cargoes, and 186 those who lost as insurers of such vessels or cargoes.

These insurers, by the terms of their policies, undertook and agreed—

This is a quotation from the policy—

to bear and take upon themselves all risks and perils of the sea, men of war, fire, enemies, rovers, thieves, jettison, letters of marque and countermarque, surprisals, takings at sea, arrests, restraints, and detainments of all kings, princes, or people of what nation, condition, or quality whatsoever.

That is what they insured these vessels against. They were paid these exorbitant rates because of the extraordinary and unusual risks that they assumed, and yet when loss occurred it is proposed to pay back these insurance companies and to reimburse the insured for the amount of premiums they paid.

I can not understand upon what grounds of justice or equity such a claim as that can be allowed. If any member of the committee who is supporting this bill can offer any reason for reimbursing these men, who were paid for assuming this risk and who received these exorbitant fees, I should like to have it.

Many of the vessels that they insured were not lost. They were in the business for profit, and why should the Government make good their losses and let them keep the premiums paid?

Indeed, in some of these cases the cargoes and vessels were overinsured, as I can cite from the reports, and when the companies refused to pay the entire amount of the insurance because it was more than the value of the vessel and the cargo, they settled by paying a per cent of the loss, and then they returned to the insured a like per cent of the premium that he had paid; but the Government proposes in this bill to reimburse these men for their entire loss and then let the beneficiaries keep all the premium.

Continuing, Mr. Cleveland said:

The premiums received on these policies were large, and the losses were precisely those within the contemplation of the insurers. It is well known that the business of insurance is entered upon with the expectation that the premiums received will pay all losses and yield a profit to the insurance companies in addition; and yet, without any showing that the business did not result in a profit to these insurance claimants, it is proposed that the Government shall indemnify them against the precise risks they undertook, notwithstanding the fact that the money appropriated is not to be paid except "by way of gratuity—payments as of grace and not of right."

That closes Mr. Cleveland's message of veto.

I am aware of the fact that in resisting this bill as I do I am performing a disagreeable service. It is not a pleasant thing for me to contend as I am contending against the committee of which I am a member. It is much easier for a man in the legislative or the executive department of the Government to "go along" and let the personal interests of men prevail against the public interests. It is the easy way to do. I assume the responsibility of taking hours of the Senate's time in resisting this bill because I think it should be beaten and ought not to pass. It ought not to pass because the claims contained herein are not justified, because the Government of the United States does not owe these people this money. While I have consumed the time of the Senate in my attempt to expose the injustice or the iniquities of this bill, I have no apologies to make for it, because I feel that I am doing my duty to the public as well as carrying out what I know to be the responsibilities that are imposed upon me as a Member of this body.

First, I do not believe that an omnibus claims bill is ever justified. An omnibus claims bill is the vehicle through which claims that can not pass Congress upon their own merits are dragged through. This bill is organized to carry claims through that would not pass Congress upon their own merit. The $842,000 carried for the French spoliation claims, if standing here upon its own merits as an independent proposition, unaided by other claims, would not pass the American Congress. It never has in the 100 years of the controversy.

Many other claims are included in this bill, and they are very skillfully adjusted so as to cover the various parts of the country. If Senators will note the report of the committee they will find that if this bill is passed citizens of the State of Louisiana will receive $205,000. These claims may be just and they may not be. I would not hesitate to vote for any claim that was just; but the claims represented by the $205,000 that will go to citizens of the State of Louisiana should stand upon their own merits and not be used as an argument to induce Senators representing that section of the country to vote through other claims for which they would not give their support if they stood independent and alone.

The citizens of the State of Virginia are to receive, if this bill passes, $164,000. These claims may be just. I am not saying that they are not. There are many other Virginia claims of the same character that are being pressed for consideration, that stand upon the same authority, having been reported by the Court of Claims and having been considered by the committee, but they are not in this bill. Some of them have been allowed and others have been rejected, because it was thought fit to confine the bill to just such an amount as Congress might be induced to appropriate.

Mr. MARTIN. Mr. President——

The VICE PRESIDENT. Does the Senator from Kansas yield to the Senator from Virginia?

Mr. BRISTOW. Certainly.

Mr. MARTIN. I do not like to let remarks like that pass unnoticed. If there is a member of the Committee on Claims who has been influenced by the considerations and motives which are attributed to him by the Senator from Kansas, it was not revealed in the committee in any way.

It is true there are some claims in this bill for the State of Virginia. I do not think the Senator from Kansas voted against a single one of them in committee. If there is one of them that is not just, it ought to go out of the bill. Every claim does stand on its own merits, and as far as I am concerned, and, I believe, as far as every other member of the committee is concerned, this bill was framed absolutely according to the convictions of the committee on each claim as it was presented, and no consideration of expediency entered into the mind of any member of the committee.

I think it is very unworthy of the Senator from Kansas to come here and impugn the motives of the committee, and attribute to them motives which, I am sure, were not entertained in the mind of any member of the committee when the bill was considered. I am on that committee, and I certainly did not myself vote for the insertion of a single claim on any other basis or consideration than its intrinsic merit and justice, and I believe every other member of the committee was actuated by similar motives.

Mr. BRISTOW. I am not reflecting on the motives of a single Member of this body or a single member of the Committee on Claims, but it does not seem to me that it is improper, in the discussion of an important measure like this, to refer to well-known plans that always prevail in the forming of omnibus bills, in a claims bill as well as any other bill of a similar kind. Omnibus public buildings bills may be justified, because the Government receives a building for the money expended. It is a question of judgment as to whether the need for a building is sufficient for the expenditure incurred. But a claims bill is a different thing. A claims bill is a bill for the payment of claims against the Government, and every claim should rest upon its own merits and stand the analysis of the facts that surround it, and when hundreds of claims are bunched in a bill for passage, it makes it impossible for the Senate to give that consideration to the merits of these claims that they deserve.

It is a well-known fact, which I do not think the Senator from Virginia, if he is frank, as he always is, will deny, that such legislation as this offers the opportunity for claims to go through without proper examination, and there are a number of appropriations in this bill for which reports have not been filed. There are a number of ships and cargoes that are to be paid for, and there is no report in this volume to show what the findings of the courts were. Certainly, there ought not be any items included in this bill upon which the Senate has not been given ample information, and how can the Senate know whether they are just or not when there have not been filed the reports that should have accompanied the examination of the bills by the committee?

I was simply stating a fact which every Senator here knows. It is not a reflection on any individual Senator. I would be the last to cast any reflection upon the Senator from Virginia, because he and I have not disagreed on these claims, as a rule. I may have voted for all of the claims referred to by the Senator from Virginia. I am sure I voted for some of them. I thought they were just, and there would be no difficulty in passing through this body, judging from the experience we have had with claims that are not included in this bill, every claim that is just.

Mr. MONEY. Will the Senator from Kansas permit me to ask him a question?

Mr. BRISTOW. Certainly.

Mr. MONEY. Does the Senator believe it is practicable to pass any number of these bills after a careful examination of each one by the Senate?

Mr. BRISTOW. Oh, certainly. We pass similar bills every day that the calendar is called.

Mr. MONEY. But does the Senator believe that we could pass this bill as it is now presented by considering each item?

Mr. BRISTOW. Oh, certainly.

Mr. MONEY. Then I want to say that we pass such bills on the calendar without consideration, and when the Senate gets to the point where it can not trust a committee it will cease to do business; the calendar will become so blocked that it will be impossible to do anything. Certainly we must trust our committees—we must trust this committeee—to put their respective business in such shape that it can go through the House.

Now, some of the charges against certain items in this bill to-day are based on their age. The claims are not aged because of fault on the part of the men who bring them, but because the Government persistently refuses to pay its just debts. When I say "its just debts" I mean a debt that has been ascertained by the Court of Claims to be just and due, after a fair investigation and ascertainment of the facts, and then by a committee appointed for the purpose of considering them, and, I presume, each one of them on its own merits. They have not been grouped together simply to pass any bad bill, but simply because each one is entitled to a place in a general bill. It is not a log-rolling bill in any sense of the word.

I have never belonged to this committee, and I would not under any consideration belong to any such committee in this body, one of them being the Pensions Committee, and then the

Committee on the District of Columbia, and, again, the Appropriations Committee, because they do not consider subjects congenial to my habits or taste. But I submit to my friend the Senator from Kansas, who is fair, that it is improbable for these claims to be paid if they are to be considered and presented to the Senate one at a time. The very matter of time itself would preclude most of them from consideration and of course from payment.

Mr. BRISTOW. I appreciate the spirit with which the Senator from Mississippi offers his suggestions. My experience, of course, on this committee is limited, but I believe firmly that every just claim can be considered and passed without any detriment to the public business and without any injury to the claimant and without an omnibus claims bill. I do not believe that this omnibus claims bill would have been prepared this year if it had not been necessary in order to pass the French spoliation claims. Certainly, eliminating them, all of the rest of these claims could have been considered without any great inconvenience to the Senate or the committee.

Now, to show how unjust these claims are, and I refer now to the French spoliation claims, I want to call attention again to the ship *Venus*. The *Venus* was a ship, an armed vessel, that carried 12 guns. It was manned by a crew of 25 men. It was on a voyage, according to the report here, from Gibraltar to Java.

Its cargo consisted of $31,000 of Spanish coin, which belonged to the owners of the vessel—that is, $30,000 of it belonged to the owners of the vessel and $1,000 to the captain of the vessel, or the master. In addition to the $31,000 the cargo consisted of a package or bundle of silk stockings, valued at $540, belonging to the captain or the master of the ship. This ship was on a voyage from Gibraltar to Java, with $31,000 of Spanish coin and a bundle of silk stockings. It was captured by three French cruisers, that seemed to have been pursuing it, in a harbor in one of the Cape Verde Islands. Now, it is proposed to reimburse the owners of this ship, first for the coin that was aboard belonging to them, and the captain of the ship for the value of the stockings aboard belonging to the captain. Why he was taking this large supply of silk stockings to Java I can not say, but that seemed to be the port to which the ship was destined. It had been out to sea less than two weeks on this long voyage.

Now, what is it proposed to do? First, to reimburse the owners for $31,000 of coin; second, to reimburse the captain for $570 worth of silk stockings and to pay back to the owners the insurance premium of $3,500, the insurance which they had on the money they were carrying—their own money—insured against the dangers of the sea. Now, why should they be paid the $3,500 premium on the insurance which they had bought on this money of theirs that they were carrying about in their own ship?

Mr. HEYBURN. I should like to ask a question for information. Was the insurance company ever called upon to make good its policy?

Mr. BRISTOW. It made good the policy and paid the full amount, $19,600, for which the money was insured.

Mr. HEYBURN. And does the bill contemplate the repayment to the insurance company of its losses?

Mr. BRISTOW. Ah; in this instance it was a company, and it does not pay the insurance company for that loss. If it had been an individual underwriter, it would. It pays back to the owner of the vessel the premium he paid for the insurance, and he received the amount of the insurance from the insurance company. The Court of Claims——

Mr. HEYBURN. That is, he got what he paid for?

Mr. BRISTOW. He got what he paid for. The Court of Claims recommends, I believe, that the insurance company be reimbursed. If we are to follow the recommendations of the Court of Claims, why not reimburse the insurance company?

But that is not all. I want to call the attention of the Senate to the fact that this bill not only reimburses these men for the insurance premiums they paid on their own money which they were carrying in their own ship, but it proposes to pay them $4,144 for the freight that it is alleged the ship would have earned on the voyage. That is, it is paying these men $4,144 for transporting their own money as freight from Gibraltar to Java, when the vessel did not get any further than the Cape Verde Islands.

Now, I want to appeal to Senators here who are giving me some attention and to ask them if there is any method under heaven by which a payment of that kind can be justified. The facts will not be denied, because they are here in the reports of the committee.

There is another interesting case. There are many of them. I will refer to just one more, and then I will close, because I have presented this as elaborately as I am justified in doing, and I feel that I have presented to the Senate the facts, or most of them, at least.

Now, there was a ship, *Jane*, which was captured. This vessel was insured. The value of the vessel was $10,000, the value of the cargo $3,150. The premium on the vessel and cargo was $2,000, and the freight was $4,000. She was insured for $13,000. The insurance was paid. The insurance covered the entire value of the vessel and the cargo; that is, the ship's value and the value of the cargo were completely covered by the insurance. The owner of the ship and cargo had no loss, none whatever, because he got full value of his cargo and vessel from the insurance company.

Now, what does this bill propose to do? It pays him the amount of the premiums which he paid for the insurance, and then pays him for the earnings that the voyage would have brought him—$4,000 of a freight charge; that is, it appropriates $6,000 to this man more than the value of his ship and his cargo. He was made good by the company and lost nothing except the premium on the policy, as every man does in a fire or in any other loss, and now this bill proposes not only to reimburse him for the premium which he paid, but pays him $4,000 which he alleges he would have earned if the ship had made the trip.

I want to appeal to Senators who have enough interest to give attention to the facts that I am citing from the reports of the committee and to ask them if they think that such payments as those are just. I know how difficult it is to get the attention of the Senate on a detailed discussion like this; I know how disagreeable it is for Senators to stand here and talk against appropriations that are to be distributed to constituents throughout the various States; but this body in its judgment has made me a member of the committee to consider these claims, and I am trying to do it as best I can, and as long as I am a member of this committee and as long as I am a Member of this body I intend to expose such legislation as this from the floor of this Chamber. It is not justified, and it can not be justified anywhere, in any court, or under any conditions.

I read from the report of the Committee on Claims of the Senate, made on the 3d day of March, 1818, which report was then adopted by the Senate without division. It was prepared by men familiar with the scene out of which the claims grew. Its spirit of fairness and yet its strength should appeal to all. The committee said:

> The committee can not discover any original obligation on the United States to pay those claims, and they think it would be more unreasonable to infer obligation when their nature has been found to preclude their recovery by negotiation. To them it appears the Government has performed its duty with fidelity and diligence, and that the alleged liability of it to pay on the ground of its having renounced its pretensions to recover those claims is of no validity. No details have been laid before the committee, nor even an estimate of the amount claimed. From the number and chanracter of the memorialists it may fairly be presumed to be very considerable. This is not offered as a reason for the disallowance of the claim, but as one why its merits ought to be well investigated. The claims heretofore allowed by treaty presents proof that those now made are of more doubtful justice. The committee have thought it unnecessary to decide on the question of the alleged illegality of the captures and confiscations of which the memorialists complain. It is obvious, however, that France was not the only belligerent that preyed upon neutral commerce during the late European wars, or under whose piratical depredations our citizens have suffered during that period. England and her allies made the first attempts to violate the law of nations, as reference to the President's message to Congress, of the 23d of December, 1808, will prove. France soon fell in with their course of wrong, and in the sequel even minor States emulated their more powerful neighbors in the career of iniquity. From which of them have your citizens obtained redress? And if you allow this claim, which on the catalogue will not impose on you as strong or stronger obligations to make reimbursements? Where are the reclamations for the 1,000 ships plundered from your people under the British orders? Our country has fought hard, it is true, and conquered a glorious peace, and will it be said that the Government, in the failure to recover indemnity for this plunder, purchased it at the expense of the sufferers? Certainly not. Such reasoning, however, would be about as pertinent as that offered by the memorialists.
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> This claim is in part made by underwriters, and even insurance companies. Their pretensions are certainly weaker than the bona fide claimant of the vessels and merchandise. While the committee entertain the utmost respect for the memorialists and, they hope, duly estimate the feelings of men who have suffered so severely under losses arising out of a spirit of wanton injustice, they indulge the remark that lapse of time has softened the features of the original grievance while it has made it more difficult to adjust the claim, if it was right to undertake it. Individual ruin was often consequent on these alleged illegal captures and condemnations, but much of the injury was incurred under a knowledge of the risk, and, in the main, the commerce of the country flourished. Speaking the same language with one of the belligerents, it is fairly presumalbe a portion of the losses in question was connected with foreign interest, at all times difficult to detect, not less so from lapse of time. Indeed, this seems to have been a cause for the withholding payment by France of these claims in part.
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> The memorialists suggest they have, for reasons arising out of the state of the country, forborne hitherto to bring their claim into the view of Congress, but now that the state of the Treasury is capable of affording ample means for doing justice to all the citizens they have been led to ask relief. For this patriotic forbearance the claimants are entitled to due credit, but the committee are not aware that this ought to have any weight in deciding on the claim. It certainly does not re-

lax the obligations of Congress to observe as strict and just an application of the public moneys as if the Treasury were not so well supplied. The committee takes occasion to remark that when the amount of the ultimate engagements of the Government are duly weighed there will be found abundant cause for care and economy in the disbursement of the public moneys. From a full consideration of this case the committee respectfully submit the following resolution:

"*Resolved*, That the relief asked by the memorialists and petitioners ought not to be granted."

The following are the members of the committee that presented this report:

Mr. Roberts, of Pennsylvania; Mr. Morril, of New Hampshire; Mr. Goldsborough, of Maryland; Mr. Ruggles, of Ohio; and Mr. Wilson, of New Jersey.

It will be observed that a majority of this committee are from States in which the claimants lived.

The following are the Members of the United States Senate in 1818, Fifteenth Congress, first session, who attended the session:

New Hampshire.—David L. Morril and Clement Storer.
Rhode Island and Providence Plantations.—James Burrill, jr., and William Hunter.
Vermont.—Isaac Tichenor and James Fisk.
Connecticut.—David Daggett and Samuel W. Dana.
New York.—Rufus King and Nathan Sanford.
New Jersey.—James J. Wilson and Mahlon Dickerson.
Pennsylvania.—Abner Lacock and Jonathan Roberts.
Virginia.—James Barbour and John W. Eppes.
North Carolina.—Nathaniel Macon and Montford Smith.
South Carolina.—John Gaillard and William Smith.
Georgia.—Charles Tait and George M. Troup.
Kentucky.—John J. Crittenden and Isham Talbot.
Tennessee.—John Williams and George W. Campbell.
Ohio.—Benjamin Ruggles and Jeremiah Morrow.
Indiana.—James Noble and Waller Taylor.
Massachusetts.—Harrison Gray Otis and Eli P. Ashmun.
Maryland.—Robert H. Goldsborough.
Delaware.—Outerbridge Horsey and Nicholas Van Dyke.
Mississippi.—Walter Leake and Thomas H. Williams.
Louisiana.—Eligius Fromentin and Henry Johnson.

I ask permission of the Senate to insert in the RECORD as a part of my remarks the entire report of the Senate committee on March 3, 1818, which declared that these claims were not justified and ought not to be paid.

The PRESIDING OFFICER (Mr. OLIVER in the chair). Is there objection? The Chair hears none.

The matter referred to is as follows:

IN THE SENATE OF THE UNITED STATES,
March 3, 1818.

The Committee of Claims, to whom has been referred the memorial of certain merchants of Portsmouth, in New Hampshire, and its vicinity; the memorial of merchants, underwriters, and insurance companies, of Philadelphia; the petition and memorial of merchants and underwriters of Baltimore; and the memorial and petition of merchants and underwriters, citizens of the United States, of Charleston, S. C., report:

That the petitioners and memorialists state they suffered under unjust and illegal captures and condemnations of their vessels and merchandise, by the cruisers and admiralty courts of France, from the early part of the year 1793 to the year 1800. These losses are alleged to have arisen out of a "series of decrees of France and her colonial authorities, violating the plainest principles of the law of nations, and treaties then existing with the United States." The disputes which grew up between the two nations during the period above referred to terminated in the convention concluded at Paris, September 30, 1800. The second article of that convention deferred negotiation in regard to the complaints of the two Governments respecting the nonfulfillment of treaty stipulations, and upon the indemnities mutually due or claimed by the parties. This article was disagreed to by the Senate, and the convention so amended, was at last mutually ratified, with the provision, "that the two States should renounce the respective pretensions, which was the object of that article." The memorialists contend their just claim to indemnity on the French Government has been thus wholly extinguished; and they further contend that the abrogation of inconvenient treaties was had in consequence of the surrender of their claim.

It was the duty of this Government to use its efforts for the reclamation of the property its citizens thus alleged to have been unjustly taken from them by the cruisers of other nations. This duty appears to have been fulfilled. The article of the convention above referred to deferred negotiation to an indefinite period on the points it embraced, during which time the former treaties and conventions were to have no operation. This was in effect a renunciation of these claims, so far as negotiation was concerned.

The subsequent modification suggested by France produced no essential change in the instrument as ratified by the Senate, and even as it was at first negotiated. It is not intended by the memorialists that they hold the Government originally obligated to indemnify them for these losses; still less, then, is it liable to do so, after the most earnest efforts have been made for their relief through negotiation.

A long course of collisions had previously to the arrangement of 1800 brought the two nations to a state of hostilities, which precluded the possibility of a return to the observance of former stipulations, nor to peace without the intervention of new negotiation. Former treaties were conclusively abrogated, and their disputes had become matter of adjustment in the will of the two parties under the then existing circumstances. It was for them to determine anew on what ground the future intercourse of the two communities should rest.

A recovery of these claims before the ordinary tribunals of France was out of the question, nor does it seem reasonable their private application to the Government would have been more available. They could only have hoped indemnity through the means of public negotiation. It is evident the evils of war were removed by the convention of 1800, and all that could be obtained for the claims in question was the deferment of their settlement to a convenient time; but the second article which the Senate struck out related to disputes arising out of the former treaties and upon indemnities mutually due or claimed. The fourth and fifth articles recognize certain species of claims, with the positive and express exclusion of indemnities on account of confiscations and captures; so that the ratification of the fourth and fifth articles was a disclosure of the temper of France and the United States, which clearly evinces how little value there would have been in the suppression of the second article without the condition of renunciation.

In the fourth article of a convention made with France in 1803 it is expressly agreed that the preceding articles of said convention, which relate to indemnities, "shall comprehend no debts but such as are due to citizens of the United States who have been, and are yet, creditors of France for supplies, for embargoes, and prizes made at sea, in which the appeal has been properly lodged within the period fixed by the convention of 1800." The fifth article of the convention of 1803 particularly defines the claims allowable, and adds, "that prizes whose condemnation has been or shall be confirmed are not to be comprehended in its provisions, and it is expressly understood that the benefit of reclamation is not extended to American citizens who have established houses in France or England, or other countries than the United States, in partnership with foreigners, and all agreements and bargains concerning merchandise which shall not be the property of American citizens are equally excepted from the benefit of said convention, saving to such persons their claims in like manner as if this treaty had not been made." A careful consideration of these provisions not only show how effectually Government has pursued negotiation for those indemnities, but that the outstanding or unsatisfied claims were then excluded from difficulties intrinsically belonging to them, which time has not lessened. It would be much more difficult for the United States at this time to discriminate as to the real character of the property for which indemnity is claimed, and whether its confiscation was just or not, than it would have been for France at that time. The committee can not discover any original obligation on the United States to pay those claims, and they think it would be more unreasonable to infer obligation when their nature has been found to preclude their recovery by negotiation. To them it appears the Government has performed its duty with fidelity and diligence and that the alleged liability of it to pay on the ground of its having renounced its pretension to recover those claims is of no validity. No details have been laid before the committee, nor even an estimate of the amount claimed. From the number and character of the memorialists it may fairly be presumed to be very considerable. This is not offered as a reason for the disallowance of the claim, but as one why its merits ought to be well investigated. The claims heretofore allowed by treaty presents proof that those now made are of more doubtful justice. The committee have thought it unnecessary to decide on the question of the alleged illegality of the captures and confiscations of which the memorialists complain.

It is obvious, however, that France was not the only belligerent that preyed upon neutral commerce during the late European wars, or under whose piratical depredations our citizens have suffered during that period. England and her allies made the first attempts to violate the law of nations, as reference to the President's message to Congress of the 23d December, 1808, will prove. France soon fell in with their course of wrong, and in the sequel even minor states emulated their more powerful neighbors in the career of iniquity. From which of them have your citizens obtained redress? And if you allow this claim, which on the catalogue will not impose on you as strong or stronger obligations to make reimbursements? Where are the reclamations for the 1,000 ships plundered from your people under the British orders? Our country has fought hard, it is true, and conquered a glorious peace, and will it be said that the Government, in the failure to recover indemnity for this plunder, purchased it at the expense of the sufferers? Certainly not. Such reasoning, however, would be about as pertinent as that offered by the memorialists.

This claim is in part made by underwriters, and even insurance companies; their pretensions are certainly weaker than the bona fide claimants of the vessels and merchandise. While the committee entertain the utmost respect for the memorialists, and, they hope, duly estimate the feelings of men who have suffered so severely under losses arising out of a spirit of wanton injustice, they indulge the remark that lapse of time has softened the features of the original grievance, while it has made it more difficult to adjust the claim, if it was right to undertake it. Individual ruin was often consequent on these alleged illegal captures and condemnations, but much of the injury was incurred under a knowledge of the risk, and in the main the commerce of the country flourished. Speaking the same language with one of the belligerents, it is fairly presumable a portion of the losses in question was connected with foreign interest, at all times difficult to detect, not less so from lapse of time. Indeed, this seems to have been a cause for the withholding payment by France of these claims in part.

The memorialists suggest they have, for reasons arising out of the state of the country, forborne hitherto to bring their claim into the view of Congress, but now that the state of the Treasury is capable of affording ample means for doing justice to all the citizens, they have been led to ask relief. For this patriotic forbearance the claimants are entitled to due credit, but the committee are not aware that this ought to have any weight in deciding on the claim. It certainly does not relax the obligations of Congress to observe as strict and just an application of the public moneys as if the Treasury was not so well supplied. The committee take occasion to remark that when the amounts of the ultimate engagements of the Government are duly weighed, there will be found abundant cause for care and economy in the disbursement of the public moneys. From a full consideration of this case, the committee respectfully submit the following resolution:

Resolved, That the relief asked by the memorialists and petitioners ought not to be granted.

APPENDIX.

VETO MESSAGE OF PRESIDENT PIERCE.

FEBRUARY 17, 1855.

To the House of Representatives:

I have received and carefully considered the bill entitled "An act to provide for the ascertainment of claims of American citizens for spoliations committed by the French prior to the 31st of July, 1801," and, in the discharge of a duty imperatively enjoined on me by the Constitution, I return the same, with my objections, to the House of Representatives, in which it originated.

In the organization of the Government of the United States the legislative and executive functions were separated and placed in distinct hands. Although the President is required, from time to time, to recommend to the consideration of Congress such measures as he shall

judge necessary and expedient, his participation in the formal business of legislation is limited to the single duty, in a certain contingency, of demanding for a bill a particular form of vote, prescribed by the Constitution, before it can become a law. He is not invested with power to defeat legislation by an absolute veto, but only to restrain it, and is charged with the duty, in case he disapproves a measure, of invoking a second and a more deliberate and solemn consideration of it on the part of Congress. It is not incumbent on the President to sign a bill as a matter of course and thus merely to authenticate the action of Congress, for he must exercise intelligent judgment or be faithless to the trust reposed in him. If he approve a bill he shall sign it; but if not, he shall return it, with his objections, to that House in which it shall have originated, for such further action as the Constitution demands, which is its enactment, if at all, not by a bare numerical majority as in the first instance, but by a constitutional majority of two-thirds of both Houses.

While the Constitution thus confers on the legislative bodies the complete power of legislation in all cases, it proceeds, in the spirit of justice, to provide for the protection of the responsibility of the President. It does not compel him to affix the signature of approval to any bill unless it actually have his approbation; for, while it requires him to sign if he approve, it, in my judgment, imposes upon him the duty of withholding his signature if he do not approve. In the execution of his official duty in this respect he is not to perform a mere mechanical part, but is to decide and act according to conscientious convictions of the rightfulness or the wrongfulness of the proposed law. In a matter as to which he is doubtful in his own mind, he may well defer to the majority of the two Houses. Individual Members of the respective Houses, owing to the nature, variety, and amount of business pending, must necessarily rely for their guidance in many, perhaps most, cases, when the matters involved are not of popular interest, upon the investigation of appropriate committees, or, it may be, that of a single Member whose attention has been particularly directed to the subject. For similar reasons, but even to a greater extent from the number and variety of subjects daily urged upon his attention, the President naturally relies much upon the investigation had and the results arrived at by the two Houses; and hence those results, in large classes of cases, constitute the bases upon which his approval rests. The President's responsibility is to the whole people of the United States; as that of a Senator is to the people of a particular State, that of a Representative to the people of a State or district; and it may be safely assumed that he will not resort to the clearly defined and limited power of arresting legislation, and calling for reconsideration of any measure, except in obedience to requirements of duty. When, however, he entertains a decisive and fixed conclusion, not merely of the unconstitutionality, but of the impropriety, or injustice in other respects, of any measure, if he declare that he approves it he is false to his oath, and he deliberately disregards his constitutional obligations.

I cheerfully recognize the weight of authority which attaches to the action of a majority of the two Houses. But in this case, as in some others, the framers of our Constitution, for wise considerations of public good, provided that nothing less than a two-thirds vote of one or both of the Houses of Congress shall become effective to bind the coordinate departments of the Government, the people, and the several States. If there be anything of seeming invidiousness in the official right thus conferred on the President, it is in appearance only, for the same right of approving or disapproving a bill, according to each one's own judgment, is conferred on every Member of the Senate and of the House of Representatives.

It is apparent, therefore, that the circumstances must be extraordinary which would induce the President to withhold approval from a bill involving no violation of the Constitution. The amount of the claims proposed to be discharged by the bill before me, the nature of the transactions in which those claims are alleged to have originated, the length of time during which they have occupied the attention of Congress and the country, present such an exigency. Their history renders it impossible that a President, who has participated to any considerable degree in public affairs, could have failed to form respecting them a decided opinion upon what he would deem satisfactory grounds. Nevertheless, instead of resting on former opinions, it has seemed to me proper to review and more carefully examine the whole subject, so as satisfactorily to determine the nature and extent of my obligations in the premises.

I feel called upon at the threshhold to notice an assertion, often repeated, that the refusal of the United States to satisfy these claims, in the manner provided by the present bill, rests as a stain on the justice of our country. If it be so, the imputation on the public honor is aggravated by the consideration that the claims are coeval with the present century, and it has been a persistent wrong during that whole period of time. The allegation is that private property has been taken for public use without just compensation, in violation of express provision of the Constitution; and that reparation has been withheld, and justice denied, until the injured parties have for the most part descended to the grave. But it is not to be forgotten or overlooked that those who represented the people, in different capacities, at the time when the alleged obligations were incurred, and to whom the charge of injustice attaches in the first instance, have also passed away, and borne with them the special information which controlled their decision, and, it may well be presumed, constituted the justification of their acts.

If, however, the charge in question be well founded, although its admission would inscribe on our history a page which we might desire most of all to obliterate, and although, if true, it must painfully disturb our confidence in the justice and the high sense of moral and political responsibility of those whose memories we have been taught to cherish with so much reverence and respect, still we have only one course of action left to us, and that is to make the most prompt and ample reparation in our power, and consign the wrong, as far as may be, to forgetfulness.

But no such heavy sentence of condemnation should be lightly passed upon the sagacious and patriotic men who participated in the transactions out of which these claims are supposed to have arisen, and who, from their ample means of knowledge of the general subject in its minute details, and from their official position, are peculiarly responsible for whatever there is of wrong or injustice in the decisions of the Government.

Their justification consists in that which constitutes the objection to the present bill, namely, the absence of any indebtedness on the part of the United States. The charge of a denial of justice in this case, and a consequent stain upon our national character, has not yet been indorsed by the American people. But, if it were otherwise, this bill, so far from relieving the past, would only stamp on the present a more deep and indelible stigma. It admits the justice of the claims, concedes that payment has been wrongfully withheld for fifty years, and then proposes not to pay them, but to compound with the public creditors by providing that, whether the claims shall be presented or not, whether the sum appropriated shall pay much or little of what shall be found due, the law itself shall constitute a perpetual bar to all future demands. This is not, in my judgment, the way to atone for wrongs, if they exist, nor to meet subsisting obligations.

If new facts, not known or not accessible during the administration of Mr. Jefferson, Mr. Madison, or Mr. Monroe, had since been brought to light, or new sources of information discovered, this would greatly relieve the subject of embarrassment. But nothing of this nature has occurred.

That those eminent statesmen had the best means of arriving at a correct conclusion no one will deny. That they never recognized the alleged obligation on the part of the Government is shown by the history of their respective administrations. Indeed, it stands not as a matter of controlling authority, but as a fact of history, that these claims have never, since our existence as a Nation, been deemed by any President worthy of recommendation to Congress.

Claims to payment can rest only on the plea of indebtedness on the part of the Government. This requires that it should be shown that the United States have incurred liability to the claimants, either by such acts as deprive them of their property, or by having actually taken it for public use, without making just compensation for it.

The first branch of the proposition—that on which an equitable claim to be indemnified by the United States for losses sustained might rest—requires at least a cursory examination of the history of the transactions on which the claims depend. The first link which in the chain of events arrests attention is the treaties of alliance and of amity and commerce between the United States and France, negotiated in 1778. By those treaties peculiar privileges were secured to armed vessels of each of the contracting parties in the ports of the other; the freedom of trade was greatly enlarged; and mutual obligations were incurred by each to guarantee to the other their territorial possessions in America.

In 1792–93, when war broke out between France and Great Britain, the former claimed privileges in American ports which our Government did not admit as deducible from the treaties of 1778, and which, it was held, were in conflict with obligations to the other belligerent powers. The liberal principle of one of the treaties referred to—that free ships make free goods, and that subsistence and supplies were not contraband of war, unless destined to a blockaded port—was found, in a commercial view, to operate disadvantageously to France, as compared with her enemy, Great Britain, the latter asserting, under the law of nations, the right to capture, as contraband, supplies when bound for an enemy's port.

Induced mainly, it is believed, by these considerations, the Government of France decreed, on the 9th of May, 1793, the first year of the war, that "the French people are no longer permitted to fulfill toward the neutral powers in general the vows they have so often manifested, and which they constantly make for the full and entire liberty of commerce and navigation; and, as a countermeasure to the course of Great Britain, authorized the seizure of neutral vessels bound to an enemy's port, in like manner as that was done by her great maritime rival. This decree was made to act retrospectively, and to continue until the enemies of France should desist from depredations on the neutral vessels bound to the ports of France. Then followed the embargo, by which our vessels were detained in Bordeaux; the seizure of British goods on board of our ships, and of the property of American citizens, under the pretense that it belonged to English subjects, and the imprisonment of American citizens captured on the high seas.

Against these infractions of existing treaties and violations of our rights as a neutral power, we complained and remonstrated. For the property of our injured citizens we demanded that due compensation should be made, and from 1793 to 1797 used every means, ordinary and extraordinary, to obtain redress by negotiation. In the last-mentioned year these efforts were met by a refusal to receive a minister sent by our Government with special instructions to represent the amicable disposition of the Government and people of the United States, and their desire to remove jealousies and to restore confidence by showing that the complaints against them were groundless. Failing in this, another attempt to adjust all differences between the two Republics was made in the form of an extraordinary mission, composed of three distinguished citizens, but the refusal to receive was offensively repeated; and thus terminated this last effort to preserve peace and restore kind relations with our early friend and ally, to whom a debt of gratitude was due which the American people have never been willing to depreciate or to forget. Years of negotiation had not only failed to secure indemnity for our citizens and exemption from further depredations, but these long-continued efforts had brought upon the Government the suspension of diplomatic intercourse with France, and such indignities as to induce President Adams, in his message of May 16, 1797, to Congress, convened in special session, to present it as the particular matter for their consideration, and to speak of it in terms of the highest indignation. Thenceforward the action of our Government assumed a character which clearly indicates that hope was no longer entertained from the amicable feeling or justice of the Government of France, and hence the subsequent measures were those of force.

On the 28th of May, 1798, an act was passed for the employment of the Navy of the United States against "armed vessels of the Republic of France," and authorized their capture if "found hovering on the coast of the United States for the purpose of committing depredations on the vessels belonging to the citizens thereof." On the 18th of June, 1798, an act was passed prohibiting commercial intercourse with France, under the penalty of the forfeiture of the vessels so employed. On the 25th of June, the same year, an act to arm the merchant marine to oppose searches, capture aggressors, and recapture American vessels taken by the French. On the 28th of June, same year, an act of the condemnation and sale of French vessels captured by authority of the act of 28th of May preceding. On the 27th of July, same year, an act abrogating the treaties and the convention which had been concluded between the United States and France, and declaring "that the same shall not henceforth be regarded as legally obligatory on the Government or citizens of the United States." On the 9th of the same month an act was passed which enlarged the limits of the hostilities then existing by authorizing our public vessels to capture armed vessels of France wherever found upon the high seas, and conferred power on the President to issue commissions to private armed vessels to engage in like service.

These acts, though short of a declaration of war, which would put all the citizens of each country in hostility with those of the other, were nevertheless actual war, partial in its application, maritime in its character, but which required the expenditure of much of our public treasure and much of the blood of our patriotic citizens, who, in vessels but little suited to the purposes of war, went forth to battle on the high

seas for the rights and security of their fellow citizens and to repel indignities offered to the national honor.

It is not, then, because of any failure to use all available means, diplomatic and military, to obtain reparation that liability for private claims can have been incurred by the United States, and if there is any pretense for such liability it must flow from the action, not from the neglect, of the United States. The first complaint on the part of France was against the proclamation of President Washington of April 22, 1793. At that early period in the war which involved Austria, Prussia, Sardinia, the United Netherlands, and Great Britain on the one part, and France on the other, the great and wise man who was the Chief Executive, as he was and had been the guardian of our then infant *Republic*, proclaimed that "the duty and interest of the United States require that they should, with sincerity and good faith, adopt and pursue a conduct friendly and impartial toward the belligerent powers." This attitude of neutrality, it was pretended, was in disregard of the obligations of alliance between the United States and France. And this, together with the often-renewed complaint that the stipulations of the treaties of 1778 had not been observed and executed by the United States, formed the pretext for the series of outrages upon our Government and its citizens, which finally drove us to seek redress and safety by an appeal to force. The treaties of 1778, so long the subject of French complaints, are now understood to be the foundation upon which are laid these claims of indemnity from the United States for spoliations committed by the French prior to 1800. The act of our Government which abrogated not only the treaties of 1778, but also the subsequent consular convention of 1788, has already been referred to, and it may be well here to inquire what the course of France was in relation thereto. By the decrees of 9th of May, 1793, 7th of July, 1796, and 2d of March, 1797, the stipulations which were then and subsequently most important to the United States were rendered wholly inoperative. The highly injurious effects which these decrees are known to have produced show how vital were the provisions of treaty which they violated and make manifest the incontrovertible right of the United States to declare, as the consequence of these acts of the other contracting party, the treaties at an end.

The next step in this inquiry is, whether the act declaring the treaties null and void was ever repealed or whether by any other means the treaties were revived so as to be either the subject or the source of national obligation. The war, which has been described, was terminated by the treaty of Paris of 1800, and to that instrument it is necessary to turn to find how much of preexisting obligations between the two Governments outlived the hostilities in which they had been engaged. By the second article of the treaty of 1800 it was declared that the ministers plenipotentiary of the two parties, not being able to agree respecting the treaties of alliance, amity, and commerce of 1778 and the convention of 1788, nor upon the indemnities mutually due or claimed, the parties will negotiate further on these subjects at a convenient time, and until they shall have agreed upon these points the said treaties and convention shall have no operation.

When the treaty was submitted to the Senate of the United States the second article was disagreed to, and the treaty amended by striking it out and inserting a provision that the convention then made should continue in force eight years from the date of ratification, which convention thus amended was accepted by the First Consul of France, with the addition of a note explanatory of his construction of the convention to the effect that by the retrenchment of the second article the two States renounce the respective pretensions which were the object of the said article.

It will be perceived by the language of the second article, as originally framed by the negotiators, that they had found themselves unable to adjust the controversies on which years of diplomacy and of hostilities had been expended, and that they were at last compelled to postpone the discussion of those questions to that most indefinite period, a "convenient time." All, then, of these subjects which was revived by the convention was the right to renew, when it should be convenient to the parties, a discussion which had already exhausted negotiation, involved the two countries in a maritime war, and on which the parties had approached no nearer to concurrence than they were when the controversy began.

The obligations of the treaties of 1778 and the convention of 1788 were mutual and estimated to be equal. But however onerous they may have been to the United States, they had been abrogated, and were not revived by the convention of 1800, but expressly spoken of as suspended until an event which could only occur by the pleasure of the United States. It seems clear, then, that the United States were relieved of no obligation to France by the retrenchment of the second article of the convention, and if thereby France was relieved of any valid claims against her, the United States received no consideration in return, and that if private property was taken by the United States from their own citizens it was not for public use. But it is here proper to inquire whether the United States did relieve France from valid claims against her on the part of citizens of the United States and did thus deprive them of their property.

The complaints and counter complaints of the two Governments had been that treaties were violated, and that both public and individual righs and interests had been sacrificed. The correspondence of our ministers engaged in negotiations, both before and after the convention of 1800, sufficiently proves how hopeless was the effort to obtain full indemnity from France for injuries inflicted on our commerce from 1793 to 1800, unless it should be by an account in which the rival pretensions of the two Governments should each be acknowledged and the balance struck between them.

It is supposable, and may be inferred from the contemporaneous history as probable, that had the United States agreed in 1800 to revive the treaties of 1778 and 1788 with the construction which France had placed upon them, that the latter Government would, on the other hand have agreed to make indemnity for those spoliations which were committed under the pretext that the United States were faithless to the obligations of the alliance between the two countries.

Hence the conclusion that the United States did not sacrifice private rights or property to get rid of public obligations, but only refused to reassume public obligations for the purpose of obtaining the recognition of the claims of American citizens on the part of France.

All those claims which the French Government was willing to admit were carefully provided for elsewhere in the convention, and the declaration of the First Consul, which was appended in his additional note, had no other application than to the claims which had been mutually made by the Governments, but on which they had never approximated to an adjustment. In confirmation of the fact that our Government did not intend to cease from the prosecution of the just claims of our citizens against France, reference is here made to the annual message of President Jefferson of December 8, 1801, which opens with expressions of his gratification at the restoration of peace among sister nations; and after speaking of the assurances received from all nations with whom we had principal relations, and of the confidence thus inspired, that our peace with them would not have been disturbed if they had continued at war with each other, he proceeds to say:

"But a cessation of irregularities which had afflicted the commerce of neutral nations, and of the irritations and injuries produced by them, can not but add to this confidence, and strengthen, at the same time, the hope that wrongs committed on unoffending friends, under a pressure of circumstances, will now be reviewed with candor, and will be considered as founding just claims of retribution for the past and new assurances for the future."

The zeal and diligence with which the claims of our citizens against France were prosecuted appear in the diplomatic correspondence of the three years next succeeding the convention of 1800, and the effect of these efforts is made manifest in the convention of 1803, in which provision was made for payment of a class of cases, the consideration of which France had at all previous periods refused to entertain, and which are of that very class which it has been often assumed were released by striking out the second article of the convention of 1800. This is shown by reference to the preamble and to the fourth and fifth articles of the convention of 1803, by which were admitted among the debts due by France to citizens of the United States the amounts chargeable for "prizes made at sea in which the appeal has been properly lodged within the time mentioned in the said convention of the 30th of September, 1800;" and this class was further defined to be only "captures of which the council of prizes shall have ordered restitution, it being well understood that the claimant can not have recourse to the United States, otherwise than he might have had to the French Republic, and only in case of the insufficiency of the captors."

If, as was affirmed on all hands, the convention of 1803 was intended to close all questions between the Governments of France and the United States, and twenty millions of francs were set apart as a sum which might exceed, but could not fall short of, the debts due by France to the citizens of the United States, how are we to reconcile the claim now presented with the estimates made by those who were of the time and immediately connected with the events, and whose intelligence and integrity have, in no small degree, contributed to the character and prosperity of the country in which we live? Is it rational to assume that the claimants, who now present themselves for indemnity by the United States, represent debts which would have been admitted and paid by France but for the intervention of the United States? And is it possible to escape from the effect of the voluminous evidence tending to establish the fact that France resisted all these claims; that it was only after long and skillful negotiation that the agents of the United States obtained the recognition of such of the claims as were provided for in the conventions of 1800 and 1803? And is not this conclusive against any pretensions of possible success on the part of the claimants, if left unaided to make their applications to France, that the only debts due to American citizens, which have been paid by France, are those which were assumed by the United States as part of the consideration in the purchase of Louisiana?

There is little which is creditable either to the judgment or patriotism of those of our fellow-citizens who at this day arraign the justice, the fidelity, or love of country of the men who founded the Republic, in representing them as having bartered away the property of individuals to escape from public obligations, and then to have withheld from them just compensation. It has been gratifying to me, in tracing the history of these claims, to find that ample evidence exists to refute an accusation which would impeach the purity, the justice, and the magnanimity of the illustrious men who guided and controlled the early destinies of the Republic.

I pass from this review of the history of the subject, and, omitting many substantial objections to these claims, proceed to examine somewhat more closely the only grounds upon which they can by possibility be maintained.

Before entering on this, it may be proper to state distinctly certain propositions which, it is admitted on all hands, are essential to prove the obligations of the Government.

First. That at the date of the treaty of September 30, 1800, these claims were valid and subsisting as against France.

Second. That they were released or extinguished by the United States in that treaty, and by the manner of its ratification.

Third. That they were so released or extinguished for a consideration valuable to the Government, but in which the claimants had no more interest than any other citizens.

The convention between the French Republic and the United States of America, signed at Paris on the 30th day of September, 1800, purports in the preamble to be founded on the equal desire of the First Consul (Napoleon Bonaparte) and the President of the United States to terminate the differences which have arisen between the two States. It declares, in the first place, that there shall be firm, inviolable, and universal peace, and a true and sincere friendship, between the French Republic and the United States. Next it proceeds, in the second, third, fourth, and fifth articles, to make provision in sundry respects, having reference to past differences, and the transition from the state of war between the two countries to that of general and permanent peace. Finally, in the residue of the twenty-seventh article, it stipulates anew the conditions of amity and intercourse, commercial and political, thereafter to exist, and, of course, to be substituted in place of the previous conditions of the treaties of alliance and of commerce, and the consular convention, which are thus tacitly, but unequivocally, recognized as no longer in force, but in effect abrogated, either by the state of war, or by the political action of the two Republics.

Except in so far as the whole convention goes to establish the fact that the previous treaties were admitted on both sides to be at an end, none of the articles are directly material to the present question, save the following:

"ART. II. The ministers plenipotentiary of the two parties not being able to agree at present respecting the treaty of alliance of 6th February, 1778, the treaty of amity and commerce of the same date, and the convention of the 14th November, 1788, nor upon the indemnities mutually due or claimed, the parties will negotiate further on these subjects at a convenient time; and until they may have agreed upon these points, the said treaties and convention shall have no operation, and the relations of the two countries shall be regulated as follows:

"ART. V. The debts contracted by one of the two nations with individuals of the other, or by the individuals of one with the individuals of the other, shall be paid, or the payment may be prosecuted in the same manner as if there had been no misunderstanding between the two States. But this clause shall not extend to indemnities claimed on account of captures or confiscations."

On this convention being submitted to the Senate of the United States, they consented and advised to its ratification, with the following proviso:

"*Provided*, That the second article be expunged, and that the following article be added or inserted: It is agreed that the present convention shall be in force for the term of eight years from the time of the exchange of ratifications."

The spirit and purpose of this change are apparent and unmistakable. The convention, as signed by the respective plenipotentiaries, did not adjust all the points of controversy. Both nations, however, desired the restoration of peace. Accordingly, as to those matters in the relations of the two countries concerning which they could agree, they did agree for the time being; and as to the rest, concerning which they could not agree, they suspended and postponed further negotiation.

They abandoned no pretensions, they relinquished no right on either side, but simply adjourned the question until "a convenient time." Meanwhile, and until the arrival of such convenient time, the relations of the two countries were to be regulated by the stipulations of the convention.

Of course, the convention was, on its face, a temporary and provisional one, but in the worst possible form of prospective termination. It was to cease at a convenient time. But how should that convenient time be ascertained? It is plain that such a stipulation, while professedly not disposing of the present controversy, had within itself the germ of a fresh one; for the two Governments might at any moment fall into dispute on the question whether that convenient time had or had not arrived. The Senate of the United States anticipated and prevented this question by the only possible expedient—that is, the designation of a precise date. This being done, the remaining parts of the second article became superfluous and useless; for, as all the provisions of the convention would expire in eight years, it would necessarily follow that negotiations must be renewed within that period; more especially, as the operation of the amendment which covered the whole convention was that even the stipulation of peace in the first article became temporary, and expired in eight years, whereas that article, and that article alone, was permanent, according to the original tenor of the convention.

The convention thus amended being submitted to the first consul, was ratified by him, accompanying his act of acceptance by the following declaratory note:

"The Government of the United States having added in its ratification that the convention should be in force for the space of eight years, and having omitted the second article, the Government of the French Republic consents to accept, ratify, and confirm the above convention, with the addition importing that the convention shall be in force for the space of eight years, and with the retrenchment of the second article: *Provided*, That by this retrenchment the two States renounce the respective pretensions which are the object of the said articles."

The convention, as thus ratified by the First Consul, having been again submitted to the Senate of the United States, that body resolved that "they considered the convention as fully ratified," and returned the same to the President for promulgation, and it was accordingly promulgated in the usual form by President Jefferson.

Now, it is clear that in simply resolving that "they considered the convention as fully ratified," the Senate did, in fact, abstain from any express declaration of dissent or assent to the construction put by the First Consul on the retrenchment of the second article. If any inference beyond this can be drawn from their resolution, it is that they regarded the proviso annexed by the First Consul to his declaration of acceptance as foreign to the subject, as nugatory, or as without consequence or effect. Notwithstanding this proviso, they considered the ratification as full. If the new proviso made any change in the previous import of the convention, then it was not full; and in considering it a full ratification they, in substance, deny that the proviso did in any respect change the tenor of the convention.

By the second article, as it originally stood, neither Republic had relinquished its existing rights or pretensions either as to other previous treaties or the indemnities mutually due or claimed, but only deferred the consideration of them to a convenient time. By the amendment of the Senate of the United States that convenient time, instead of being left indefinite, was fixed at eight years; but no right or pretension of either party was surrendered or abandoned.

If the Senate erred in assuming that the proviso added by the First Consul did not affect the question, then the transaction would amount to nothing more than to have raised a new question to be disposed of on resuming the negotiations, namely, the question whether the proviso of the First Consul did or not modify or impair the effect of the convention as it had been ratified by the Senate.

That such, and such only, was the true meaning and effect of the transaction; that it was not, and was not intended to be, a relinquishment by the United States of any existing claim on France, and especially that it was not an abandonment of any claims of individual citizens nor the set-off of these against any conceded national obligations to France is shown by the fact that President Jefferson did at once resume and prosecute to successful conclusion negotiations to obtain from France indemnification for the claims of citizens of the United States existing at the date of that convention, for on the 30th of April, 1803, three treaties were concluded at Paris between the United States of America and the French Republic, one of which embraced the cession of Louisiana; another stipulated for the payment of 60,000,000 of francs by the United States to France; and a third provided that, for the satisfaction of sums due by France to citizens of the United States at the conclusion of the convention of September 30, 1800, and in express compliance with the second and fifth articles thereof, a further sum of 20,000,000 of francs should be appropriated and paid by the United States. In the preamble to the first of these treaties, which ceded Louisiana, it is set forth that—

"The President of the United States of America and the First Consul of the French Republic, in the name of the French people, desiring to remove all source of misunderstanding relative to objects of discussion mentioned in the second and fifth articles of the convention of the 8th Vendémiaire, ninth year (30th September, 1800), relative to the rights claimed by the United States in virtue of the treaty concluded at Madrid the 27th of October, 1795, between His Catholic Majesty and the said United States, and willing to strengthen the union and friendship which at the time of the said convention was happily reestablished between the two nations, have respectively named their plenipotentiaries," who "have agreed to the following articles."

Here is the most distinct and categorical declaration of the two Governments that the matters of claim in the second article of the convention of 1800 had not been ceded away, relinquished, or set off, but they were still subsisting subjects of demand against France. The same declaration appears in equally emphatic language in the third of these treaties, bearing the same date, the preamble of which recites that—

"The President of the United States of America and the First Consul of the French Republic, in the name of the French people, having by a treaty of this date terminated all difficulties relative to Louisiana, and established on a solid foundation the friendship which unites the two nations, and being desirous, in compliance with the second and fifth articles of the convention of the 8th Vendémiaire, ninth year of the French Republic (30th September, 1800), to secure the payment of the sums due by France to the citizens of the United States," and "have appointed plenipotentiaries," who agreed to the following among other articles:

"ART. I. The debts due by France to citizens of the United States, contracted before the 8th of Vendémiaire, ninth year of the French Republic (30th September, 1800), shall be paid according to the following regulations, with interest at 6 per cent, to commence from the periods when the accounts and vouchers were presented to the French Government.

"ART. II. The debts provided for by the preceding article are those whose result is comprised in the conjectural note (a) annexed to the present convention, and which with the interest can not exceed the sum of 20,000,000 of francs. The claims comprised in the said note which fall within the exceptions of the following articles shall not be admitted to the benefit of this provision."

"ART. IV. It is expressly agreed that the preceding articles shall comprehend no debts but such as are due to citizens of the United States who have been and are yet creditors of France for supplies, for embargoes, and prizes made at sea, in which the appeal has been properly lodged within the time mentioned in the said convention, 8th Vendémiaire, ninth year (30th September, 1800).

"ART. V. The preceding articles shall apply only, first, to captures of which the council of prizes shall have ordered restitution, it being well understood that the claimant can not have recourse to the United States, otherwise than he might have had to the Government of the French Republic, and only in case of insufficiency of the captors; second, the debts mentioned in the said fifth article of the convention, contracted before the 8th Vendémiaire, ninth year (30th September, 1800), the payment of which has been heretofore claimed of the actual Government of France, and for which the creditors have a right to the protection of the United States; the said fifth article does not comprehend prizes whose condemnation has been or shall be confirmed. It is the express intention of the contracting parties not to extend the benefit of the present convention to reclamations of American citizens who shall have established houses of commerce in France, England, or other countries than the United States, in partnership with foreigners, and who by that reason, on the nature of their commerce, ought to be regarded as domiciliated in the places where such houses exist. All agreements and bargains concerning merchandise, which shall not be the property of American citizens, are equally excepted from the benefit of the said convention, saving, however, to such persons their claims in like manner as if this treaty had not been made."

"ART. XII. In case of claims for debts contracted by the Government of France with citizens of the United States since the 8th Vendémiaire, ninth year (30th September, 1800), not being comprised in this convention, may be pursued, and the payment demanded in the same maner as if it had not been made."

Other articles of the treaty provide for the appointment of agents to liquidate the claims intended to be secured, and for the payment of them, as allowed, at the Treasury of the United States. The following is the concluding clause of the tenth article:

"The rejection of any claim shall have no other effect than to exempt the United States from the payment of it, the French Government reserving to itself the right to decide definitely on such claim so far as it concerns itself."

Now, from the provisions of the treaties thus collated, the following deductions undeniably follow, namely:

First. Neither the second article of the convention of 1800, as it originally stood, nor the retrenchment of that article, nor the proviso in the ratification by the First Consul, nor the action of the Senate of the United States thereon, was regarded by either France or the United States as the renouncement of any claims of American citizens against France.

Second. On the contrary, in the treaties of 1803 the two Governments took up the question precisely where it was left on the day of the signature of that of 1800, without suggestion on the part of France that the claims of our citizens were excluded by the retrenchment of the second article, or the note of the First Consul, and proceeded to make ample provision for such as France could be induced to admit were justly due, and they were accordingly discharged in full, with interest, by the United States in the stead and behalf of France.

Third. The United States, not having admitted in the convention of 1800 that they were under any obligations to France, by reason of the abrogation of the treaties of 1778 and 1788, persevered in this view of the question by the tenor of the treaties of 1803, and therefore had no such national obligation to discharge, and did not, either in purpose or in fact, at any time, undertake to discharge themselves from any such obligation at the expense and with the property of individual citizens of the United States.

Fourth. By the treaties of 1803 the United States obtained from France the acknowledgment and payment, as part of the indemnity for the cession of Louisiana, of claims of citizens of the United States for spoliations, so far as France would admit her liability in the premises; but even then the United States did not relinquish any claim of American citizens not provided for by those treaties; so far from it, to the honor of France be it remembered, she expressly reserved to herself the right to reconsider any rejected claims of citizens of the United States.

Fifth. As to claims of citizens of the United States against France, which had been the subject of controversy between the two countries prior to the signature of the convention of 1800, and the further consideration of which was reserved for a more convenient time by the second article of that convention, for these claims, and these only, provision was made in the treaties of 1803, all other claims being expressly excluded by them from their scope and purview.

It is not to be overlooked, though not necessary to the conclusion, that by the convention between France and the United States of the 4th of July, 1831, complete provision was made for the liquidation, discharge, and payment, on both sides, of all claims of citizens of either against the other for unlawful seizures, captures, sequestrations, or destructions of the vessels, cargoes, or other property, without any limitation of time, so as in terms to run back to the date of the last pre-

ceding settlement, at least to that of 1803, if not to the commencement of our national relations with France.

This review of the successive treaties between France and the United States has brought my mind to the undoubting conviction that while the United States have, in the most ample and the completest manner, discharged their duty toward such of their citizens as may have been at any time aggrieved by acts of the French Government, so, also, France has honorably discharged herself of all obligations in the premises toward the United States. To concede what this bill assumes, would be to impute undeserved reproach both to France and to the United States.

I am, of course, aware that the bill proposes only to provide indemnification for such valid claims of citizens of the United States against France as shall not have been stipulated for and embraced in any of the treaties enumerated. But in excluding all such claims, it excludes all, in fact, for which, during the negotiations, France could be pursuaded to agree that she was in anywise liable to the United States, or our citizens. What remains? And for what is five millions appropriated? In view of what has been said, there would seem to be no ground on which to raise a liability of the United States, unless it be the assumption that the United States are to be considered the insurer and the guarantor of all claims, of whatever nature, which any individual citizen may have against a foreign nation.

FRANKLIN PIERCE.

The veto message was considered in the House immediately after its reception, and on the following day. The question was then taken on "the passage of the bill, the President's objections to the contrary notwithstanding," and it was disagreed to by a vote of 113 yeas against 86 nays. So two-thirds not voting in the affirmative, the House refused to pass the bill over the President's veto.

Mr. BRISTOW. I move to amend the bill by striking out from line 20, on page 47, to and including line 26, on page 118, which includes the $842,000 of French spoliation claims.

The PRESIDING OFFICER. The amendment proposed by the Senator from Kansas will be stated.

The SECRETARY. The Senator from Kansas moves to strike out, beginning on line 19, page 47, down to and including line 26, on page 118, all of the claims known as the French spoliation claims.

Mr. BRISTOW. I want to say before the question is put that it includes nothing except the spoliation claims. I propose simply to strike them out.

Mr. BURNHAM. Mr. President, I am very anxious that we should vote now on this question as promptly as possible. The bill has been before the Senate a considerable time. I intended to submit some remarks in opposition to what has been said, but for the present I will withhold those remarks. I desire, however, to put into the RECORD Senator Sumner's report and also the speech of Daniel Webster as a reply to the remarks which have been made.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The matter referred to is as follows:

[Senate Report No. 306, Forty-eighth Congress, first session.]

IN THE SENATE OF THE UNITED STATES.

March 12, 1884.—Ordered to be printed.

Mr. Hoar, from the Committee on Claims, submitted the following report (to accompany bill S. 1820):

The Committee on Claims, to whom was referred the bill (S. 250) to provide for the ascertainment of claims of American citizens for spoliations committed by the French prior to the 31st day of July, 1801, and also the petitions of Sarah R. Blake and others, Eliza F. Dillingham and others, and Harvey Stanley and others, for payment of such claims, have considered the same, and report:

We adopt the report made from this committee to the first session of the Forty-seventh Congress, which is subjoined. We report the accompanying original bill and recommend its passage.

Your committee ask leave to present first a brief congressional history of these remarkable claims. In 1802 they were first reported to the House of Representatives by Mr. Giles in behalf of a select committee appointed for their investigation. Again, in 1807, by Mr. Marion, of South Carolina. These two reports were a favorable statement of facts, without recommendation, probably on account of the unfortunate condition of the finances at that time. In 1818 there was an adverse report by Mr. Roberts; in 1822, to the House, by Mr. Russell; in 1824, by Mr. Forsyth. In 1826, under the administration of John Quincy Adams, all of the evidence touching these claims, gathered from the documentary history and from the ample material accumulated in the archives of the Department of State, was for the first time completely presented to Congress, and from that time to this there has never been an unfavorable report to either House.

There have been, however, made to both Houses 40 favorable reports, among which are 1 by Mr. John Holmes, 3 by Edward Everett, 3 by Edward Livingston, 1 by Daniel Webster, 3 by Caleb Cushing, 3 by Rufus Choate, 4 by Truman Smith, 1 by Hannibal Hamlin, and 3 by Charles Sumner. Twice a bill for the relief of these claimants has passed both Houses, one vetoed by President Polk as a Senate bill, and on the veto the Senate voted yeas 27, nays 15; and one vetoed by President Pierce as a House bill; and the House voted on the veto yeas 113, nays 86; in neither case two-thirds.

The legislatures of the 13 original States have all at various times passed resolutions directing their Senators and asking their Representatives to take favorable action in behalf of these claimants.

Your committee will give the briefest possible statement of the nature and origin of these claims.

The colonies were engaged in their terrible struggle for independence. It seemed hopeless; so hopeless that Washington announced, in a formal letter to Congress, "that unless some great and capital change takes place the Army must be reduced to one or the other of three things—starve, dissolve, or disperse;" when, on February 6, 1778, this dark cloud was dispelled by the proclamation of a treaty with France, signed by Benjamin Franklin, in which that powerful Nation guaranteed to the United States their "liberty, sovereignty, and independence, absolute and unlimited," and the United States guaranteed to France, among other things, the "present possessions of the Crown of France in America, as well as those which it may acquire by future treaty of peace;" and it was further stipulated that "in case of rupture between France and England the reciprocal guarantee shall have full force and effect the moment such war shall break out."

The possessions of France in America at this date were the West India Islands, and Granada and Cayenne on the mainland, and the guarantee to France was "forever." France faithfully executed her agreement at a cost of $280,000,000, and at the sacrifice of thousands of lives of infinitely greater value than money, and the independence of the United States was achieved.

A score of years had hardly passed before the whole of monarchical Europe was arrayed in arms against republican France, and the American minister, of all the ministers of foreign powers, alone remained in Paris. The conduct of the United States during that war, the negotiations of treaties, the issuing of proclamations, the failure of the performance of the guaranty contained in the treaty of alliance with France, are all familiar and fully set forth in the reports to which your committee will refer. France, indignant at what she regarded as a breach of faith and gross ingratitude on the part of the United States, retaliated by the destruction of thousands of our ships and the confiscation of their cargoes. The claims to-day under consideration are by American citizens whose property was thus destroyed. The justice of these claims against France was urged by the United States and admitted by France, and neither here nor there in the history of all the negotiations for their recovery was there ever a denial, but France presented a counterclaim for national wrongs inflicted upon her by the United States. The United States admitted the national wrongs, and seeing that the perpetual guaranty made to France in the treaty of alliance might forever expose her to such claims, anxious to be relieved from the obligations of the treaty, negotiated to that end.

The result of these negotiations was that France gave the United State a full release from all her national "counterclaims," also from the guaranty contained in the treaty of alliance, and in consideration thereof the United States relieved France from all the individual claims of the citizens preferred. It was a high price to pay, but the value of the purchase amply justified it. Our Government received the benefits of this settlement, and never paid a dollar to her own citizens whose property she had sacrificed to secure it. The descendants of those citizens are to-day before Congress asking justice. Such is the briefest possible statement of the case of these claimants.

The objections to the payment of these claims found in the adverse reports referred to, in the "views of the minority" accompanying some of the favorable reports, in the veto messages of Mr. Polk and Mr. Pierce, in a speech of Silas Wright, made in the United States Senate in 1835, are as follows:

1. That they are stale.
2. That the condition of the finances of the country will not admit of their payment.
3. That at the time they arose there was a state of war between the United States and France.
4. That they were embraced in the Louisiana convention.
5. That they were embraced in the convention of 1831 with France.
6. That Congress annulled the French treaties and thus affected them.

Thus it is evident that very serious and grave issues of both fact and law are raised. All these questions are considered and discussed in the report of Hon. Charles Sumner made to the United States Senate in 1870, which also embraces important statements of fact, citations from state papers, from the treaties between the two Governments, the negotations touching the same, and your committee annex said report to this for information, not meaning, however, to express any opinion as to the soundness of its argument or the correctness of its conclusions or the validity of the claims, as in their judgment no finding by them of fact or law is necessary in this case. The bill under consideration provides for the ascertainment of all the facts in the controversy, a settlement of all the questions of law arising, by the court of claims with the right of appeal to the Supreme Court of the United States.

Your committee concur in the opinion that the gravity of the case and justice to both the claimants and the Government demand a settlement of these vexed questions by an authority whose findings shall be final and conclusive. Therefore they report back the accompanying bill, with amendments, with a recommendation that, as amended, it pass.

EXHIBIT C.

[Senate Report No. 10, 41st Cong., 2d sess.]

IN THE SENATE OF THE UNITED STATES.

January 17, 1870.—Ordered to be printed.

Mr. Sumner made the following report (to accompany bill S. No. 350):

The Committee on Foreign Relations, to whom was referred Senate bill No. 350, to provide for the adjustment and satisfaction of claims of American citizens for spoliations committed by the French prior to 31st day of July, 1801, beg leave to report that they now adopt the report of the committee on this bill made to the Senate April 4, 1864, as follows:

The Committee on Foreign Relations, to whom were referred the petition of sundry citizens of New York, presented at the present session, and also numerous petitions and resolutions of State legislatures, taken from the files of the Senate, asking just compensation for "individual" claims on France, appropriated by the United States to obtain a release from important "national" obligations, have had the same under consideration, and beg leave to report:

The welfare of the Republic requires that there should be an end of "suits," lest while men are mortal, these should be immortal. Such is a venerable maxim of the law, which is illustrated by the case now before the committee. The present claims have outlived all the original sufferers and at least two generations of those who have so ably enforced them in the halls of Congress. Against their unwonted vitality death has not been able to prevail.

CHARACTER OF THESE CLAIMS.

Of all claims in our history, these are most associated with great events and great sacrifices. First in time, they are also first in character, for they spring from the very cradle of the Republic and the trials of its infancy. To comprehend them, you must know, first, how independence was won; and, secondly, how, at a later day, peace was assured. Other claims have been merely personal or litigious; these are historic. Here were "individual" losses, felt at the time most

keenly, and constituting an unanswerable claim upon France, which were employed by our Government at a critical moment, like a credit or cash in hand, to purchase release from outstanding "national" obligations, so that the whole country became at once the trustee of these sufferers, bound, of course, to gratitude for the means thus contributed, but bound also to indemnify them against these losses. And yet these sufferers, thus unique in situation, have been compelled to see all other claims for foreign spoliations satisfied, while they alone have been turned away. As early as 1794 our plundered fellow citizens obtained compensation to the amount of more than $10,000,000 on account of British spoliations. Similar indemnities have been obtained since from Spain, Naples, Denmark, Mexico, and the South American States, while, by the famous convention of 1831, France contributed $5,000,000 to the satisfaction of spoliations under the continental system of Napoleon. Spain stipulated to pay for every ship or cargo taken within Spanish waters, even by the French, so that the French spoliations on our commerce within Spanish waters have been paid for, but French spoliations on our commerce eslewhere before 1880 are still unredeemed. Such has been the fortune of claimants the most meritorious of all.

In all other cases there has been simply a claim for foreign spoliations, but without any superadded obligation on the part of our Government. Here is a claim for foreign spoliations, the precise counterpart of all other claims, but with a superadded obligation on the part of our Government, in the nature of a debt, constituting an assumpsit, or implied promise to pay; so that these sufferers are not merely claimants on account of French spoliations, but they are also creditors on account of a plain assumption by the Government of the undoubted liability of France. The appeal of these claimant-creditors is enhanced beyond the pecuniary interests involved when we consider the nature of this assumption, and especially that, in this way, our country obtained a final release from embarrassing stipulations with France contracted in the war for national independence. Regarding it, therefore, as a debt, it constitutes a part of that sacred debt incurred for national independence, and is the only part remaining unpaid.

PRELIMINARY OBJECTIONS.

Before proceeding to consider the nature of existing obligations on the part of the United States, the committee ask attention to three objections which they encounter on the threshold: The first, founded on the alleged antiquity of the original claims; the second, on the alleged character of the actual possessors; and the third, on the present condition of the country.

CLAIMS ANCIENT, BUT NOT STALE.

(1) It is said that the claims are ancient and stale, and, therefore, should not be entertained. It is true that the claims are the most ancient of any now pending, and that they date from the very origin of our existence as a nation. But in this respect they do not differ from a revolutionary pension or a revolutionary claim. Down to this day there is a standing committee of the Senate entitled "Committee on Revolutionary Claims;" but if a claim which may be traced to the Revolution must be rejected for staleness, there can be little use for this committee. If these claims, after uninterrupted sleep throughout the long intervening period, were now, for the first time, revived, they might be obnoxious to this imputation. But as from the beginning of the century they have occupied the attention of Congress, and been sustained by speeches, reports, and votes, it is impossible to say that they have been allowed to sleep.

The whole case was stated with admirable succinctness as long ago as 1807 by Mr. Marion, of South Carolina, in the report of a committee of the House of Representatives, in the following words:

"From a mature consideration of the subject, and from the best judgment your committee have been able to form on the case, they are of opinion that this Government, by expunging the second article of our convention with France of the 30th of September, 1800, became bound to indemnify the memorialists for their just claims, which they would otherwise rightfully have had on the Government of France, for the spoliations committed on their commerce by the illegal captures made by the cruisers and other armed vessels of that power, in violation of the law of nations and in breach of treaties then existing between the two nations; which claims they were, by the rejection of the said article of the convention, forever barred from presenting to the Government of France for compensation."

Claims thus authoritatively stated at that early day can not be overcome by any sleep.

It is true that these claims were pressed with less constancy and determination at the beginning of the century than at a later day. But there are two sufficient reasons for the change. First, the evidence on which they are founded was less generally known at the beginning than afterwards. It was only in 1826, under the administration of John Quincy Adams, by the communication to Congress of the ample materials accumulated in the archives of state, that the true strength of the case was fully revealed. Here, in one full volume, was the documentary history of the whole double transaction, showing at once the original obligation of France and the substituted obligation of the United States, reenforced by the associations of our own Revolutionary history. A more sufficient reason for this change may be found in the fact that for some time in the early part of the century our country was still laboring under the pressure of the Revolutionary debt. As this pressure was gradually removed, and the national resources became more apparent, these claims were naturally urged with more confidence, until, on the final extinction of that debt, they occupied the attention of the best minds in both Houses of Congress.

No single question in our history has been the subject of such a succession of able reports. Whether counted or weighed, these reports are equally exceptional. They are no less than 41 in number, 23 in the Senate and 18 in the House. Among the eminent characters whose names they bear are Edward Livingston, John Holmes, Edward Everett, Daniel Webster, Caleb Cushing, Charles J. Ingersoll, John M. Clayton, and Rufus Choate. Out of the whole number only three have been adverse, one in the Senate and two in the House. But the three adverse reports were evasive only, besides being prior to the communication of the decisive evidence on the subject. The 38 reports since that communication were all in favor of the claims. (See Appendix A.)

Resolutions in favor of these claims by 13 States, being the original number which declared independence, have been presented to Congress between the years 1832 and 1858. Some States, not content with one series, have repeated their resolutions and accompanied them with elaborate arguments. They all tend to the conclusion that it is the bounden duty of Congress, without further delay, to make provision for these claims; and Senators and Representatives are earnestly requested to use their best exertions to secure the passage of a law of Congress to carry this obligation into effect.

Memorials and petitions from the beginning testify to the sleeplessness of these claims. On the 5th of February, 1802, only 46 days after the promulgation of the convention of 1800, they began, and they have continued from that early day down to this very session of Congress, making in all 3,293. Of these, 1,489 were in the Senate; 1,804 in the House. They are chiefly from original sufferers, their executors, administrators, assigns, widows, and heirs, residing in the large seaports from which the despoiled vessels originally sailed; but there are some from all parts of the country, where, in the vicissitudes of life, the representatives of original sufferers have been carried—all of which may be seen in a list of these petitioners.

Two several times—once under President Polk and again under President Pierce—both Houses of Congress concurred in an act for the relief of these claimants; but this tardy justice was arrested by presidential veto.

In the face of this constant succession of reports, resolutions of State legislatures, and petitions, constituting not only "continual claim," but continual recognition of the claim—the whole crowned by two several acts of Congress—it is impossible to attribute negligence to the claimants, or, indeed, any indulgence of inordinate confidence. They have had reason to believe that they should be successful. Under such circumstances, the lapse of time, which is sometimes urged against them, becomes an argument in their favor, for it adds constantly recurring testimony to their merits, besides a new title from the disappointment to which they have been doomed. Claims beginning thus early, and thus sustained, may be ancient, but they can not be stale.

POSSESSORS OF THE CLAIMS ARE NOT SPECULATORS.

(2) There is a trivial remark, which is rather slur than objection, that may justify a moment's attention. It is sometimes said that these claims are no longer the property of the original sufferers or their representatives, but that they have passed, like a fancy stock, into the hands of speculators. This remark, if it had foundation in fact, has not much in equity. It would be hardly creditable for a government to take advantage of its own procrastination and refuse just compensation because the original sufferer had been compelled by unwelcome necessity to discount his claims.

From the nature of the case such claims, being unliquidated, do not readily pass from hand to hand, but remain in the original custody, as has become apparent in ample experience. Precisely the same reflection was cast upon the claims against Spain, Denmark, and Naples, and indeed it is cast upon long-outstanding claims generally, until it has become a commonplace of sarcasm. The records of successive commissions which have liquidated foreign claims afford its best refutation. In every case these commissions required proof of property, but the evidence disclosed that the original sufferers or their legal representatives, including heirs, executors, assignees of bankrupts, persons having a lien for advances, or underwriters, possessing in law and equity the same right as the original sufferers, were the actual possessors of the larger part. There is no reason to suppose that it would be otherwise in the case of claims for French spoliations. On the contrary, it is believed that they remain substantially where they were when the losses took place.

The great speculator has been death, for there are few of these claims that have not passed through his hands. Such a transfer can not draw the title into doubt, especially when we consider the character of the petitioners whose names are spread on the journals of Congress. It is well known that in many families these claims still exist as heirlooms, transmitted by ancestral care in the full confidence that, sooner or later, they will be recognized by the Government.

PRESENT CONDITION OF THE COUNTRY NO REASON AGAINST PAYMENT OF JUST DEBTS.

(3) It is sometimes suggested that, even assuming the meritorious character of these claims, yet in the present condition of the country they ought to be postponed. Looking at the practical consequences of this suggestion, it will be found that though plausible in form, it is fatal in substance. Any postponement must inevitably throw these claims into direct competition with those now accumulating on account of losses during the rebellion, having in their favor the gushing sympathies of our time. It is not unjust to human nature if the committee say that the distant in time, like the distant in space, are too often out of mind. If the earlier claims are just they should not be exposed to the hazards of any such competition, when feeling will be stronger than reason. Indeed, from the probability of future claims, whose shadows already begin to appear, the argument is strengthened for the immediate satisfaction of those which now exist, especially when we consider their character and origin.

The resources of the people are now tasked to put down the rebellion. Let nothing be stinted. But there is another duty which must not be forgotten. The just debts of the Republic must be paid to the last dollar. Here also nothing must be stinted, and the glory of the one will be kindred to the glory of the other. The Republic will have new title to love at home and to honor abroad when with one hand it overcomes the rebellion now menacing its existence and with the other does justice to ancient petitioners, long neglected, constituting the only remaining creditors left to us from the War of Independence.

STATEMENT OF THE QUESTION.

Therefore, putting aside all preliminary objections to these claims, from alleged antiquity, from the character of the actual possessors, or from the present condition of the country, the committee insist that the existing obligations of the United States must be determined according to principles of justice and the facts of the case. The hearing is now as if there had been no lapse of time since the obligations accrued and as if no war now existed to task the country.

Is the money justly due? To answer this important question the subject must be considered in detail under several heads:

First. The claims of citizens of the United States against France, founded on spoliations of our commerce, as seen in their origin and history.

Secondly. The counterclaims of France founded on treaty stipulations and services rendered in the War of Independence, as seen also in their origin and history.

Thirdly. The convention of 1800 and the reciprocal release of the two Governments, by which the "individual" claims of the petitioners were treated as a set-off to the "national" claims of France.

Fourthly. The assumption by our Government of the obligations of France, so that the United States were substituted for France, and became liable to these petitioners as France had been liable.

After considering these heads in their order, it will be proper to review the objections alleged against the liability of the United States: (1) From the semihostile relations between France and the United

States anterior to the convention; (2) from payments under the Louisiana treaty; (3) from payments under the convention with France in 1831; (4) from the act of Congress annulling the early treaties with France; (5) from the early efforts of our Government to obtain from France the satisfaction of these claims; and (6) from the desperate character attributed to these claims at the time of their abandonment.

The question of "just compensation" will present itself last: (1) In the advantages secured to the United States by the sacrifice of these claims; (2) in the value of the losses which the claimants suffered; and (3) in the recommendation of the committee.

The subject is of such importance from the magnitude of interests involved and from its historic character that the minuteness of this inquiry will not be regarded as superfluous.

THE CLAIMS OF AMERICAN CITIZENS IN THEIR ORIGIN AND HISTORY.

I. The history of French spoliations on our commerce is a gloomy chapter, where a friendly power, assuming the name of republic, shows itself fitful, passionate, and unjust. This conduct is more remarkable when it is considered that only a short time before France, while yet a kingdom, contributed treasure and blood to sustain our national independence. And yet an explanation may be found in the extraordinary temper of the times. By a generous uprising of the people the kingdom was overthrown, and then, as the alarmed royalties of Europe intervened, the head of the monarch was flung to them as a gage of battle. The gage had been accepted in advance, and all these royalties, by successive treaties, entered into coalition against France. The fleets of England came tardily into the great contest, but their presence gave to it a new character and enveloped ocean as well as land in its flames. The growing commerce of the United States suffered from both sides, but especially from France, driven to frenzy by the British attempt, in the exercise of belligerent rights, to starve a whole nation.

French feelings were still further aroused against the United States when, instead of friendship and alliance, France was encountered by the proclamation of neutrality launched by Washington on the 22d April, 1793, when he undertook in behalf of the United States "to adopt and pursue a conduct friendly and impartial toward the belligerent powers." Here, according to France, was a failure not only of that proper sympathy which was due from us, but even of solemn duties pledged by those early treaties which helped to secure the national independence. This failure, which became afterwards the occasion of counterclaims, contributed to the exasperation of the time.

An early apology addressed to the American minister at Paris by the French Government attests the spoliations which had begun and discloses also their indefensible character, unless the common language spoken by the English, as well as ourselves, was a sufficient excuse. Here are the exact words:

"We hope that the Government of the United States will attribute to their true cause the abuses of which you complain, as well as other violations of which our cruisers may render themselves guilty in the course of the present war. It must perceive how difficult it is to contain within just limits the indignation of our marines, and, in general, of all the French patriots, against a people who speak the same language and having the same habits as the free Americans. The difficulty of distinguishing our allies from our enemies has often been the cause of offenses committed on board your vessels; all that the administration could do is to order indemnification to those who have suffered and to punish the guilty." (French Spoliations, Ex. Doc. No. 1826, p. 70.)

Thus heedlessly did these spoliations begin. But the national convention associated itself by formal act with this injustice when, on the 9th May, 1793, only 17 days after the proclamation of neutrality, but before it had arrived in France, a retaliatory decree was issued in response to the British attempt at starvation—arresting all neutral vessels laden with provisions and destined to an enemy's port. It was not disguised, even in the decree itself, that it was a violation of the rights of neutrals, but the necessity of the case was pleaded, and indemnity was promised to neutrals who might suffer by its operation. Unwilling to await the dilatory performance of this promise, our minister at Paris remonstrated against the application of the decree to vessels of the United States. Amidst vacillations of the national assembly, which, under the urgency of our minister, at one time seemed to relent, the decree continued to be enforced against the property of American citizens. Here were spoliations, confessed at the time to be in violation of neutral rights, which still rise in judgment.

As the intelligence of these spoliations reached the United States our whole commerce was fluttered. Merchants hesitated to expose ships and cargoes to such cruel hazards. It was necessary that something should be done to enlist again their activity. At this stage the National Government came forward voluntarily with assurance of protection and redress. This was in a circular letter dated 27th August, 1793, when Mr. Jefferson, the Secretary of State, in the name of the President, used the following language: "I have it in charge from the President to assure the merchants of the United States concerned in foreign commerce or navigation that our attention will be paid to any injuries they may suffer on the high seas or in foreign countries contrary to the law of nations and existing treaties, and that on their forwarding hither well-authenticated evidence of the same proper proceedings will be adopted for their relief." (French Spoliations, Ex. Doc. No. 1826, p. 217.) This circular was adopted by President Washington in his message of December 5, 1793, where he speaks as follows: "The vexations and spoliations understood to have been committed on our vessels and commerce by the cruisers and officers of some of the belligerent powers appeared to require attention. The proof of these, however, not having been brought forward, the description of citizens supposed to have suffered were notified that, on furnishing them to the Executive, due measures would be taken to obtain redress of the past and more effectual provisions against the future." (French Spoliations, Ex. Doc. No. 1826, p. 253.) Here, then, was a double promise from the National Government, under the influence of which our merchants continued their commerce and ventured once more upon the ocean. Their Government had tempted them, and on the occurrence of "injuries on the high seas" these good citizens, according to instructions, made haste to lodge with the Department of State the "well-authenticated evidence of the same." Their grandchildren and great-grandchildren are waiting, even now, the promised redress.

Thus, at the very beginning of these spoliations, they were recognized by both Governments in their true character. The national convention, even in its arbitrary edict, confessed them. The administration of Washington, in its solemn assurance of protection, confessed them also. Offspring of wrongful violence in the heat of war, they were regarded on each side as indefensible. Ministers in this respect reflected the sentiments of the two Governments. Fauchet, the French minister at Philadelphia, in a communication to the Secretary of State under date of March 27, 1794, expressed himself in this manner: "If any of your merchants have suffered any injury by the conduct of our privateers (a thing which would be contrary to the intention and express order of the Republic), they may, with confidence, address themselves to the French Government, which will never refuse justice to those whose claims are legal." (French Spoliations, Ex. Doc. No. 1826, p. 263.) Mr. Morris, our minister at Paris, under date of March 6, 1794, thus gave vent to his feelings: "These captures create great confusion, must produce much damage to mercantile men, and are a source of endless and well-founded complaint. Every post brings me piles of letters about it from all quarters, and I see no remedy. In the meantime, if I would give way to the clamors of the injured parties, I ought to make demands very like a declaration of war." (Ibid., p. 77.) But M. Buchot, the French commissioner of foreign relations, addressed to Mr. Morris the following soothing words, under date of July 5, 1794: "The sentiments of the convention and of the Government toward your fellow-citizens are too well known to you to leave a doubt of their disposition to make good the losses which circumstances inseparable from a great revolution may have caused some American navigators to experience." (Ibid., p. 77.) Such was the testimony at that day of ministers on both sides.

Meanwhile, Genet, the French minister at Philadelphia, was dismissed by President Washington on account of presumptuous interference in our affairs, especially hostile to the proclamation of neutrality; and John Jay was in London to negotiate the treaty of 1794, which goes under his name. Both these events added to the exasperation of France. But Mr. Monroe, who had taken the place of Mr. Morris at Paris, was full of sympathy for the new Republic, even when he frankly discharged his unpleasant duties. In a communication to the committee of public safety, under date of October 18, 1794, he exposed a "frightful picture of difficulties and losses, equally injurious to both countries, which, if suffered to continue, must unavoidably interrupt for the time the commercial intercourse between them." (State Papers, Foreign Affairs, vol. 1, p. 683.) Notwithstanding this strong language, his influence was thought to have prevailed so far that President Washington ventured to announce in a confidential message of February 20, 1795, good news for our plundered merchants. "It affords me," he said, "the highest pleasure to inform Congress that perfect harmony reigns between the two Republics, and that these claims are in a train of being discussed with candor and amicably adjusted." (Wait's American State Papers, vol. 3, p. 402.) This perfect harmony was short lived, and the hopes which flowed from it were nipped in the bud.

The knowledge of Mr. Jay's negotiations with England had already produced uneasiness in France, but when the treaty, on its ratification in October, 1795, was finally divulged there was an outburst against us. The treaty was pronounced to be in violation of existing engagements with France, and our whole policy was openly branded by the president of the directory, in his reply to Mr. Monroe, as a "condescension of the American Government to the wishes of its ancient tyrant." The directory refused to receive Charles Cotesworth Pinckney, sent by our Government in the place of James Monroe. Meanwhile, by a succession of cruel edicts, it unleashed all its cruisers to despoil our commerce and to cry havoc wherever they sailed. On the 2d July it was declared that "the French Republic will treat neutral vessels, either as to confiscation, searches, or capture, in the same manner as they shall suffer the English to treat them." The indefinite terms of this edict were justly denounced by our Government as giving scope for arbitrary construction and, consequently, for unlimited oppression and vexation. (French Spoliations, Ex. Doc. No. 1826, p. 434.) These results were soon manifest. With contagious injustice the French agents of St. Domingo reported to the Government at home "that having found no resource in finance, and knowing the unfriendly disposition of the Americans, and to avoid perishing in distress, they had armed for cruising and that already 87 cruisers were at sea, and that for three months preceding the administration had subsisted and individuals been enriched out of those prizes." (Ibid., p. 435.) So extensively did this brutality prevail that it was announced that "American vessels no longer entered the French ports unless carried in by force." (Ibid.)

This spirit of retaliation broke forth in still another edict of the directory, which became at once a universal scourge to American commerce. This edict, which bears date March 2, 1797, after enlarging the list of contraband and ordaining other measures of rigor, proceeds to declare all American vessels lawful prize if found without a rôle d'équipage or circumstantial list of the crew, all of which was in violation of existing treaties and also of usages of the United States, which notoriously did not require among a ship's papers any such list. No edict was so comprehensive in its sweep, for as all our vessels were unprovided with this safeguard, they were all defenseless. Spoliations without number ensued, so absolutely lawless and unjust that John Marshall did not hesitate to record of them in his journal under date of December 17, 1797, that "the claims for property captured and condemned for want of a rôle d'équipage constituted as complete a right as any individual ever possessed." (French Spoliations, Ex. Doc. No. 1826, p. 471.) This right, thus complete, according to the judgment of this great authority, is a large part of the claims still pending before Congress.

As if to complete this strange, eventful history, another edict, at once inhospitable and unjust, was launched by the directory January 17, 1798, prohibiting every vessel that had entered an English port from being admitted into any port of the French Republic; and still further handing over to condemnation "every vessel laden in whole or in part with merchandise coming out of England or its possessions." (French Spoliations, Ex. Doc. No. 1826, p. 483.) This edict was promptly denounced by the American plenipotentiaries newly arrived at Paris. In earnest, vigorous tones they said that it invaded at the same time the interests and the independence of neutral powers; that it took from them the profits of an honest and lawful industry, as well as the inestimable privilege of conducting their own affairs as their own judgment might direct, and that acquiescence in it would establish a precedent for national degradation that would authorize any measures which power might be disposed to practice. Thus did the plenipotentiaries depict the spirit in which the French spoliations had their origin, and the humiliating consequences of submission to the outrage. But the personal sufferers are, down to this day, without redress.

Perplexed and indignant at these proceedings, the United States meanwhile constituted a special mission, composed of three eminent citizens, Mr. Pinckney, Mr. Marshall, and Mr. Gerry, who were charged especially to secure indemnity for these spoliations. In his elaborate letter of instructions, dated July 15, 1797, the Secretary of State, Mr. Pickering, lays down the following rule of conduct: "In respect to the depredations on our commerce, the principal object will be to agree on an equitable mode of examining and deciding the claims of our citizens,

and the manner and periods of making compensation. The proposed mode of adjusting the claims, by commissioners appointed on each side, is so perfectly fair, we can not imagine that it will be refused." Although this reparation was not made an "indispensable condition of the proposed treaty," yet the plenipotentiaries were enjoined "not to renounce these claims of our citizens, nor to stipulate that they be assumed by the United States Government." (French Spoliations, Ex. Doc. No. 1826, pp. 454, 455.) Thus fully were all these claims recognized at that time by our Government, and most carefully placed under the protection of our plenipotentiary triumvirate.

The triumvirate found the French Republic in no mood of justice. Bonaparte was then triumphant at the head of the army of Italy, and Talleyrand was exhibiting his remarkable powers at the head of the foreign relations of France. Victory had given confidence, and the exulting Republic was standing tiptoe, more disposed to strike than negotiate, unless it could dictate, and implacable always toward England and all supposed to sympathize with this power. After exactions and humiliations hard to bear, the plenipotentiaries were compelled to return home without being received officially by the intoxicated Government to which they had been addressed, but not before they had encountered the masterly ability of Talleyrand, who, in reply to their statement of the claims of the United States, presented the counterclaims of France. Though remaining in Paris merely on sufferance, they had unofficial interviews with various agents of the Republic, and even with Talleyrand himself; but without dwelling on details which are not pertinent to this occasion, it is enough to say, that, while refusing to offer a loan or a bribe, they were able to declare frankly to Talleyrand "that France had taken violently from America more than $50,000,000, and treated us in every respect as enemies" (Wait's American State Papers, vol. 3, p. 497); and also to receive from Talleyrand a concession, recorded in one of their dispatches, that "some of these claims were probably just"—with the inquiry, "whether, if they were acknowledged by France, we could not give a credit as to the payment, say for two years?" (French Spoliations, Ex. Doc. No. 1826, p. 487.) Here again was an admission not to be forgotten.

The return of our plenipotentiaries without satisfaction was aggravated by circumstances which an eminent continental writer has not hesitated to brand as "unique in the annals of diplomacy." (Garden, Traités de Paix, tom. 6, p. 120.) The American plenipotentiaries were invited to pay a gratification of twelve hundred thousand francs, and the whole desperate intrigue, conducted by persons known in the correspondence as X, Y, Z, was unveiled to the world. The country was indignant, and war seemed imminent. By various acts of legislation Congress entered upon preparations, summoning Washington from retirement to gird on his sword once more as lieutenant general. The claims for French spoliations were never absent from the mind. By act of the 28th of May, 1798, public vessels of the United States were authorized to capture all "armed vessels of the Republic of France which have committed or shall be found hovering on the coast of the United States for the purpose of committing depredations on vessels belonging to citizens thereof"; and this statute was introduced by a preamble asserting "depredations on the commerce of the United States in violation of the law of nations and of treaties." By act of June 13, 1798, all commercial intercourse was suspended between the United States and France, until the "Government of France shall clearly disavow, and shall be found to refrain from aggression, depredations, and hostilities by them encouraged and maintained against the vessels and other property of the citizens of the United States." By act of June 25, 1798, merchant vessels of the United States were authorized to resist search or seizure by any French armed vessel; to repel assaults and to capture the aggressors, until "the Government of France shall cause the commanders and crews of all armed French vessels to refrain from the lawless depredations and outrages hitherto encouraged and authorized by that Government against the merchant vessels of the United States." By act of July 7, 1798, the treaties with France were declared to be no longer obligatory on the United States; and this statute was introduced by a preamble asserting that "the just claims of the United States for reparation of injuries had been refused, and their attempts to negotiate an amicable adjustment of all complaints between the two nations had been repelled with indignity." Thus, by express term, in repeated acts at the time, did Congress recognize the validity of these claims.

By these vigorous measures the rights of these claimants were asserted, and the country was put in an attitude of defense. The French directory became less intolerable, and negotiations were invited again, with the assurance that the former rudeness should not be renewed. John Adams was now President, and for the sake of peace he seized the opportunity of this overture, by appointing Chief Justice Ellsworth, Patrick Henry, and William Van Murray as a second plenipotentiary triumvirate to France. As Mr. Henry declined, Mr. Davie, of North Carolina, was substituted in his place. In adjusting the instructions, President Adams himself took a personal part, as appears by a letter to the Secretary of State, where he says: "The principal points, indeed, all the points, of the negotiation, were so minutely considered, and approved by me and all the heads of department, that nothing remains but to put them into form and dress, which service I pray you to perform as promptly as possible." (Adams's Works, vol. 1, p. 553.) But "all the points" were three only: (1) Indemnity for spoliations of American commerce; (2) the unquestionable wrong of seizing American vessels for the want of papers known to French law as rôle d'équipage; (3) the refusal to renew the treaty guarantee of the French West Indies. Such were the ultimata originally settled by the President and his Cabinet on the 4th of March, 1799, and afterwards fully developed in the elaborate instructions of Mr. Pickering, dated 22d of October, 1799, which, after announcing that "the conduct of the French Republic would well have justified an immediate declaration of war on the part of the United States," proceeded to declare, as the first point, that the plenipotentiaries, "at the opening of the negotiation, will inform the French ministers that the United States expect from France, as an indispensable condition of the treaty, a stipulation to make to the citizens of the United States full compensation for all losses and damages which they shall have sustained by reason of irregular or illegal captures, or condemnation of their vessels and other property." And the instructions end as they began, by declaring as first among the ultimata, "that an article be inserted for establishing a board with suitable powers to hear and determine the claims of our citizens, and binding France to pay or secure payment of the sums which shall be awarded." (French Spoliations, Ex. Doc. No. 1826, pp. 562, 575.) Mark here the positiveness of the assertion.

These instructions attest the interest of our Government in these indemnities. Placed first among the ultimata adopted in the councils of President Adams, they were placed first in the diplomatic instructions. But there is yet other evidence of their character and amount. The Secretary of State, in a report to Congress dated January 18, 1799, after attributing them to French feeling on account of the British treaty, proceeds to characterize them in remarkable words: "Yet that treaty had been made its chief pretense for these unjust and cruel depredations on American commerce, which have brought distress on multitudes, and ruin on many of our citizens, and occasioned a total loss of property to the United States, of probably more than $20,000,000." (French Spoliations, Ex. Doc. No. 1826, p. 480.) Such were the outrages for which our plenipotentiaries were to seek redress.

The directory had ceased to exist; but on reaching Paris the plenipotentiaries were cordially received by Talleyrand, the citizen minister of foreign affairs, who, without delay, presented them to the first consul as he was about to mount for that wonderful campaign which, beginning in the passage of the Alps, ended at Marengo. Negotiations commenced at once, Joseph Bonaparte, elder brother of the first consul and afterwards King of Spain, being at the head of the commission on the part of France. Appreciating, as they announced, "the value of time," the American plenipotentiaries in a brief note on the 7th of April—the very day when the exchange of powers was completed—proposed "an arrangement to ascertain and discharge the equitable claims of citizens of either nation upon the other, whether founded in contract, treaty, or the law of nations"; all of which was to be done in order "to satisfy the demands of justice, and render a reconciliation cordial and permanent." (French Spoliations, Ex. Doc. No. 1826, p. 581.) Thus distinctly were these claims presented at the very threshold. The French plenipotentiaries in their prompt reply admitted that "the first object of the negotiation ought to be the determination of the regulations, and the steps to be followed for the estimation and indemnification of injuries for which either nation may make claim for itself or for any of its citizens." (Ibid., p. 581.) Here was the suggestion of claims, not only "individual," but also "national," under which loomed the counterclaims of France.

The American plenipotentiaries, while professing to be free from "apprehension of unfavorable balance," protested against the consideration of any "national" claims until some "convenient stage of the negotiation after it shall be seen what arrangement would be acceptable for the claims of citizens." (Ibid., p. 582.) The French plenipotentiaries rejoined by enforcing "national" as well as "individual" claims. (Ibid., p. 583.) The issue seemed to be made. On the one side were the "individual" claims of American citizens, on the other side the "national" claims of France. The American plenipotentiaries were not authorized to recognize the "national" claims. The French plenipotentiaries were not authorized to recognize the "individual" claims without a previous recognition on our part of the "national" claims. At last, after various efforts at harmony, it was officially announced that "the negotiation was at a stand on the part of France," as her plenipotentiaries were constrained by the instructions of the first consul "to make the acknowledgment of former treaties the basis of negotiation and the condition of compensation." (Ibid., p. 609.) The first consul was then on the Italian slope of the Alps, about to pounce upon the astonished Austrians. Claims and counterclaims were at that moment of little interest to him.

Thus far the committee have exhibited the origin and history of the claims of the United States. The time has come to change the scene and to exhibit those counterclaims which played such a part in the successive negotiations, and finally produced that deadlock when the two powers stood face to face with antagonistic claims, unable to go forward and unwilling to go backward.

COUNTERCLAIMS OF FRANCE, THEIR ORIGIN AND HISTORY.

II. The counterclaims of France differ widely from the claims of American citizens. They were not "individual," but "national," being founded on alleged violations of treaty stipulations, assumed by the United States in return for the aid of France in the establishment of national independence. During the protracted controversy between the two Republics they were detailed in numerous official notes; but they were brandished by Talleyrand, with offensive skill and effect, in the very faces of our insulted plenipotentiaries, under date of March 18, 1798, when, while driving them from Paris, he insisted "that the priority of grievances and complaints belonged to the French Republic, and that these complaints and these grievances were as real as numerous long before the United States had the least ground of claim." (French Spoliations, Ex. Doc. No. 1826, p. 490.) Careful inquiry enables us to see that this allegation, thus confidently uttered, was not without a certain foundation; and here we repair to the history of our country.

The triumph with which our War of Independence happily ended came tardily, after seven years of battle, suffering, and exhaustion, but it was hastened, if not assured, by the generous alliance of France. From Bunker Hill to Saratoga the war was checkered with gloom, which even the surrender of Burgoyne did not suffice to dispel. Then came the dreary winter at Valley Forge, when soldiers of Washington, after treading the snows barefoot, were obliged, for want of blankets, to huddle all night by the fires, and even the stout heart of the commander in chief bent so far as to announce, in formal letter to Congress, that "unless some great and capital change takes place the Army must be inevitably reduced to one or the other of three things—starve, dissolve, or disperse." But the scene was changed when the glad tidings came that France, by solemn treaty signed by Franklin, February 6, 1778, had bound herself to "guarantee to the United States their liberty, sovereignty, and independence, absolute and unlimited." The camp broke forth with the mingled joy of soldier and patriot as it turned gratefully to Lafayette, already by the side of Washington, glorious forerunner of armies and navies now promised to our cause. Congress took up the strain of joy, and, by a unanimous vote, ratified the treaty which opened to our country the gates of the future.

It would be difficult to estimate the value of this treaty in money, especially when we consider its consequences. According to the report of Calonne, the French minister of finance, the war which ensued in the support of this guaranty cost France fourteen hundred and forty millions of francs, or about $280,000,000. But French blood, more costly than money, was shed on land and sea in the same cause, until at last the army of Cornwallis surrendered at Yorktown to the allied forces of Rochambeau and Washington, and the war closed by the recognition of our national independence. If liberty be priceless—if life be priceless—then was the aid lavished by France infinite beyond calculation.

The engagements were not all on the side of France. Beyond the gratitude due for this powerful alliance, there were express obligations solemnly assumed by the United States, not only in the treaty of alliance, but also in the treaty of amity and commerce negotiated on the same day. These obligations constituting the consideration of the mighty contract were of two classes; first, a guaranty by the United

States of the possessions of France in America; and, secondly, important privileges for the armed ships of France, with a promise of American convoy to French commerce.

(1) The terms of the guaranty are as follows: "The two parties guarantee, mutually, from the present time and forever, against all other powers, to wit, the United States to his most Christian Majesty, the present possessions of the Crown of France in America, as well as those which it may acquire by the future treaty of peace. And his most Christian Majesty guarantees, on his part, to the United States, their liberty, sovereignty, and independence, absolute and unlimited, as well in matters of government as commerce, and also their possessions, and the additions or conquests that their confederation may obtain during the war from any of the domains now or heretofore possessed by Great Britain in North America." (Art. II.) To fix more precisely the sense of this article, it was further stipulated that "in case of rupture between France and England, the reciprocal guaranty shall have full force and effect the moment such war shall break out; or if no rupture take place then the guaranty shall not take place until the moment of the cessation of the present war between the United States and England shall have ascertained their possessions." (Stat. L., vol. 8, p. 10.) The possessions of France in America at this date were the islands of St. Domingo, Martinique, Guadalupe, St. Lucia, St. Vincent, Tobago, Desead, Mariegalante, St. Pierre, Miquelon, Granada, and, on the mainland, Cayenne—each and all of which the United States guaranteed to France forever, being a continuing guaranty, so far as this term of law may be applied to an international transaction which, beginning "in case of rupture betwen France and England," was operative after "the cessation of the war between the United States and England," and was to continue "forever."

The terms of the "guaranty" are general, and it was "forever." Even if limited to defensive war, it would be difficult to say that France was not engaged in such a war, with the added incident that it was a war by a *combination of Kings* to overcome a Republic. France was alone, while the royalties of Europe gathered their forces against her. It was only after the execution of the King that England joined this array, lending to it invincible navies. But according to official avowals, it was what King George called "the atrocious act recently perpetrated at Paris" that finally prompted the part she undertook (Ann. Reg., 1793; State Papers, 229); and her real object, in the language of Mr. Fox, was "no other than the destruction of the internal government of France." The case was unprecedented; but it is difficult to say that it did not come under the "guaranty." The casus fœderis had occurred. If France did not exact performance, that is no reason why our obligations should be disowned, when, at the present moment, we are trying to arrive at some appreciation of their extent. A careful examination of the treaty shows that the "guaranty" became primarily obligatory on the occurrence of a rupture between France and England. Nothing is said or suggested as to the character of the war, whether offensive or defensive. It is enough that there was a "rupture." In such a case the "guaranty," according to the illustration of Cicero, was tanquam gladius in vagina, at the disposal of France. Our Secretary of State, even while seeking to limit its application, seems to have seen it prospectively in this light when in his instructions of July 15, 1797, to our plenipotentiaries, Messrs. Pinckney, Marshall, and Gerry, he said, "Our guaranty of the possessions of France in America will perpetually expose us to the risk and expense of war, or to disputes and questions concerning our national faith." (French Spoliations, Ex. Doc. No. 1826, p. 457.)

(2) The treaty of amity and commerce contained a succession of mutual stipulations by which the United States undertook, first, to protect and defend by their ships of war, or convoy any or all vessels belonging to French subjects, so long as they hold the same course," against all attacks, force, and violence, in the same manner as they ought to protect and defend" the vessels of citizens of the United States. (Arts. 6 and 7.) Secondly, to open their ports to French ships of war and privateers with their prizes and to close them against those of any power at war with France, except when driven by stress of weather; and then "all proper means shall be vigorously used that they go out and retire as soon as possible." (Art. 17.) Thirdly, to allow French privateers "to fit their ships, to sell what they had taken, or in any other manner whatsoever to exchange their ships, merchandise, or any other lading"; but privateers in enmity with France are forbidden even to victual in ports of the United States. (Stat. L., vol. 8, p. 13.) As if to round and complete these engagements it was further stipulated on the part of the United States, in a consular convention which, after many perplexities of diplomacy baffling the tried skill of Franklin, was finally signed by Mr. Jefferson in 1788 as a postscript to the earlier treaties, that French consuls and vice consuls in the United States should have power and jurisdiction on board French vessels in civil matters, with the entire inspection over such vessels, their crews, and the changes and substitutions there to be made. (Art. 7; ibid., p. 112.)

Such, briefly recited, were the solemn engagements of the United States, sanctioned by treaties as the price of independence. So long as France remained at peace with all the world, especially with Great Britain, these engagements slept unnoticed, but ready, at the first blast of war, to spring into life. At last that blast was heard, perhaps as never before in human history, echoing from capital to capital and sounding a crusade of monarchical Europe against republican France. Of all the foreign ministers at Paris the minister of the United States alone remained; the rest had fled.

The minister of the United States saw the danger lowering upon his own country from the obligations of existing treaties. In a letter to the Secretary of State, dated December 21, 1792 (American State Papers, Foreign Affairs, vol. 1, p. 347), after presenting a rapid sketch of the rising of Europe against France, he adds: "The circumstance of a war with Great Britain becomes important to us in more cases than one," and he then alluded to the "question respecting the guarantee of American possessions, especially if France should attempt to defend her islands." Notoriously Gouverneur Morris did not sympathize strongly with the French Republic, but, against all arguments for noncompliance with our original engagement, because the government with which they were made had ceased to exist, his sensitive nature broke forth in the "wish that all our treaties, however onerous, may be strictly fulfilled according to their true intent and meaning," which he followed in language foreign to the phrases of diplomacy, by picturing the honest nation as that which, like the honest man—

"Hath to its plighted faith and vow forever stood;
And though it promised to its loss, yet makes that promise good."

In harmony with this exclamation of the plenipotentiary are the words of Vattel, an authority much quoted at the time, when he says: "To refuse an ally the succors due to him, without a just dispensation, is doing him an injury; and there being a natural obligation to repair the damage done by our fault, and especially by our injustice, we are bound to indemnify an ally for all the losses he may have sustained from our unjust refusal." (Vattel, Law of Nations, book 3, chap. 6, sec. 94.)

Since the signature of the treaties times had changed, and men had changed with them. There was no bad faith on either side, in the ordinary sense of the term, but intervening events and exigencies of self-defense had driven each into unexpected inconsistencies of conduct. If on one side there was a neglect of original engagements, there was on the other an equal neglect of international duties. The tornado in mad career uprooted old landmarks, and each was striving to find new lines of reciprocal relations. Franklin, signing the "guarantee," did not expect so soon to call down upon his country the lightnings of an embattled world; nor did France, while formally conceding neutral rights on the ocean and assuring our national independence, expect so soon to become the plunderer of our commerce. But the great tragedy of the time would have been less complete if its domineering Nemesis had suffered the two republics to dwell in harmony together. They were whirled, on each side, into those questionable acts out of which have sprung the claims and counterclaims now under consideration.

A new French minister was at hand, accredited to President Washington, with fresh instructions. Differences of opinion appeared in the Cabinet on the obligations of the guarantee, some holding that it expired with the French monarchy, and others that the war on which France had entered was not defensive, so that the casus fœderis had not arrived. After ample discussion the proclamation of neutrality was adopted April 22, 1793, destined to become a turning point in our history. Chief Justice Marshall, whose opportunities of information were unquestionable, has let us know that the proclamation was "intended to prevent the French minister from demanding the performance of the guarantee contained in the treaty of alliance." But before the proclamation reached France, orders, in direct repugnance to the treaties with the United States, were issued there for the capture and forfeiture of enemies' goods on board neutral vessels, whereas it had been stipulated that free ships should make free goods, so that even if the denial of the "guarantee" was wrong, and the proclamation, according to French accusation, was "insidious," the United States were not the first to offend.

On the day of the proclamation news came by the journals that Genet, the new French minister, had landed at Charleston, where, amid the darkest days of the Revolution, Lafayette had first landed also. Full of conviction that France had only to make herself heard and her cause would be sustained, he exalted himself conspicuously above the Government. By instructions from the executive council of the French Republic, dated 17th of January, 1793, he was enjoined "to penetrate profoundly the sense of the treaties of 1778, and to watch over the articles favorable to the commerce and navigation of the United States, and to make the Americans consider engagements which might appear onerous as the just price of the independence which the French nation had secured to them. Not content with existing safeguards, the new minister was to negotiate a supplementary treaty, to fix more surely "the reciprocal guarantee of the possessions of the two powers." (Gebhardt's American and French State Papers, vol. 1, pp. 9 and 10.) In this spirit he commences a turbulent career, charging offensively that the President, before knowing what the minister had to communicate from the French Republic, was in a hurry "to proclaim sentiments on which decency and friendship should at least have drawn a veil;" "that he took on himself to give to our treaties arbitrary interpretations absolutely contrary to their true sense, and that he left no other indemnification to France for the blood she spilt, for the treasure she dissipated in fighting for the independence of the United States, but the illusory advantage of bringing prizes into their ports without being able to sell them;" and "that the Secretary of War, on his communication of the wish of the Windward Islands to receive promptly some firearms and some cannon, which might put into a state of defense possessions guaranteed by the United States, had the front to answer with an ironical carelessness that the principles established by the President did not permit him to lend so much as a pistol." (American State Papers, Foreign Affairs, vol. 1, pp. 173, 174.) In another letter the French minister, under date of June 8, 1793, requires that "the Federal Government should observe the public engagements contracted and give to the world the example of a true neutrality, which does not consist in the cowardly abandonment of friends and at the moment when danger menaces." (French Spoliations, Ex. Doc. No. 1826, p. 193.) And in still another letter, dated June 22, 1793, he declares that "it is in the conventional compacts, taken collectively, that we ought to seek contracts of alliance and of commerce simultaneously made, if we wish to take their sense and interpret faithfully the intentions of the people who cemented them and of the men of genius who dictated them." (Ibid., p. 199.) All of which was followed by another letter, dated November 14, 1793, in which the minister says, categorically: "I beg you to lay open to the President the decree and the inclosed note, and to obtain from him the earliest decision, either as to the guarantee I have claimed the fulfillment of for our colonies, or upon the mode of negotiation of the new treaty I was charged to propose to the United States, which would make of the two nations but one family." (Ibid., p. 281.) At last Genet was dismissed, but the question of our engagements with France could not be dismissed. It was more menacing than any minister. Without it all the turbulence of Genet would have been as the idle wind.

And yet, for a while, each party seems to have practiced a certain reserve on this question. Genet stormed, but the Government at home was tranquil. The "guarantee" was suspended, even in discussion. France forbore to press it, and the United States were happy to avoid the overshadowing question. The Secretary of State, in his instructions to Mr. Monroe at Paris, dated June 10, 1794, while insisting "upon compensation for the captures and spoliations of our property, and injuries to the persons of our citizens by French cruisers," was careful to add: "If the execution of the guarantee of the French islands by force of arms should be propounded, you will refer the Republic of France to this side of the water." (American State Papers, Foreign Affairs, vol. 1, p. 668.) Mr. Monroe, in his correspondence, under date of September 15, 1794, says: "This Republic had declined calling on us to execute the guarantee from a spirit of magnanimity and a strong attachment to our welfare;" but he reveals his anxiety "lest an attempt to press our case might give birth to sentiments of a different kind and create a disposition to call on us to execute that of the treaty of alliance." (Ibid., p. 675.) In another letter, dated November 7, 1794, describing an interview with the very able diplomatic committee, our plenipotentiary confesses the embarrassment he encountered when M. Merlin, twice over, asked: "Do you insist on our

executing the treaty?" And he gives his reply, "that he was not instructed by the President to insist upon it, nor did he insist upon it;" and he avows that, in his opinion, such insistance would have been impolitic, as "exciting a disposition to press us on other points upon which it were better to avoid any discussion." (Ibid., p. 87.) There is other testimony of this nature which it is unnecessary to produce. Suffice it to say, that for some time there was a lull in our discussions with the French Republic, soon to be followed by a storm.

French forbearance appears more remarkable when it is considered that the occasion for the "guarantee" had begun to be urgent. The British navy, even before Howe's great victory of June, annihilating the French fleet, swept the sea, so as to render all French possessions insecure. Tobago, Martinique, St. Domingo, St. Lucia, and Guadalupe were lost to the Republic in the spring of 1793, so that the British historian has written: "Thus, in little more than a month, the French were entirely dispossessed of their West India possessions with hardly any loss to the victorious nation." (Alison's History, vol. 3, p. 396, chap. 16.) But the "guarantee" was invoked by the impatient colonists, who, without waiting the slow movement of the French Republic, appealed directly to our Congress for "divers necessary succors—of provision, ammunition, and even men," and in impassioned language pictured "England coming to take possession of French colonies in the name of a king without dominions, and North America unable to lend a helping hand against the perfidy." (American State Papers, Foreign Affairs, vol. 1, p. 326.) The French Government at home did not at this moment share the fury of the colonists. According to Mr. Monroe, in his letter of December 2, 1794, whatever may have been their desires at a previous stage, they did not wish us now "to embark with them in the war, but would rather that we would not, from an idea that it might diminish their supplies from America; and if the point depended upon them, they would leave us to act according to our wishes;" at the same time they looked to us "for aid in the article of money." (Ibid., p. 688.) But this moderation, although a temporary waiver, was in no respect a renunciation of rights. According to Mr. Jefferson, in a letter written some months after his retirement from the Cabinet, and addressed to Mr. Madison, under date of April 3, 1794, the "guarantee" was still obligatory. "As to the guarantee of the French islands," he wrote, "whatever doubt may be entertained of the moment at which we ought to interpose, yet I have no doubt but we ought to interpose at a proper time and declare both to England and France that the islands are to rest with France, and that we will make common cause with the latter for that object." (Jefferson's Works, vol. 4, p. 102.) Such was American testimony at the time.

The West India islands were lost without causing an apparent smart in the Republic at home; but it was different when the news came of Mr. Jay's negotiation in England. The Republic was stung to the quick, and when the treaty became known did not conceal its indignant anger. Its conduct toward the United States was changed. In a formal note, dated March 11, 1796, it set forth its complaints, dwelling especially upon the "in execution of treaties," and upon the formation of the recent treaty with Great Britain, in which the United States "knowingly and evidently sacrificed their connection with the Republic." (American State Papers, Foreign Affairs, vol. 1, p. 658.) In conversation with Mr. Monroe, the French minister said "that France had much cause of complaint against us, independently of our treaty with England, but that by this treaty ours with them was annihilated." (Ibid., p. 731.) The year closed with the recall of Mr. Monroe, and with a notice from the French Government that "it will no longer recognize or receive a plenipotentiary from the United States until after a reparation of grievances, which the public has a right to expect." And then, adding ingratitude to the list of our offenses, it declared an equal expectation "that the successors of Columbus, Raleigh, and Penn, always proud of their liberty, will never forget that they owe it to France." (Ibid., pp. 746, 747.) Meanwhile, M. Adet, the French plenipotentiary in Philadelphia, was addressing our Government in similar strain, calling for the discharge of our engagements, and heaping reproaches: "The undersigned, minister plenipotentiary of the French Republic, now fulfills to the Secretary of State of the United States a painful but sacred duty. He claims, in the name of American honor, in the name of the faith of treaties, the execution of that contract which assured to the United States their existence, and which France regarded as the pledge of the most sacred union between two people the freest upon earth." And he charges the United States with "sacrificing France to her enemies, and forgetting the services that she had rendered, and throwing aside the duty of gratitude, as if ingratitude were a governmental duty." (Ibid., pp. 579, 583.) From this time forward the claims of the United States never failed to encounter the counterclaims of France.

That mutual coquetry which characterized the two Governments during the mission of Mr. Monroe gave way to mutual recrimination and repulsion, where France took the lead. M. Adet was recalled from Philadelphia; Mr. Pinckney was sent away from Paris. Three fatal decrees were launched at our commerce, letting loose a new brood of spoliations destined to enlarge the claims now under consideration; first, that the Republic will treat all neutrals in the same manner as they suffer the English to treat them; secondly, that the stipulations of the treaty of 1778, which concern the neutrality of the flags, were altered and suspended, in their most essential points, by the treaty with England; and thirdly, still another, enlarging the list of contraband, declaring Americans in the service of England pirates, and authorizing the seizure of all American vessels without a rôle d'équipage, which, notoriously, no American vessel ever carried, so that practically our flag was delivered over to the depredation of every French cruiser.

Then came that plenipotentiary triumvirate, Messrs. Pinckney, Marshall, and Gerry, who were practically instructed by our Government, while urging the multiplied claims of our citizens, already valued at "more than $20,000,000," to propose "a substitute for the reciprocal guaranty;" or, "if France insists on the mutual guaranty, to aim at some modification of it;" "instead of troops or ships of war, to stipulate for a moderate sum of money or quantity of provisions, at the option of France—the provisions to be delivered at our own ports in any future defensive wars; the sum of money, or its value in provisions, not to exceed $200,000 a year during any such war." (American State Papers, Foreign Affairs, vol. 2, p. 155.) Here was recognition of the "guaranty," and a sum offered for release from its requirements. But the French Republic, drunk with triumph and maddened anger, was in no mood for negotiation.

It met our plenipotentiaries with an intrigue already mentioned as unparalleled in the history of diplomacy, and after tolerating their presence for a while at Paris, without conceding an official reception, it sent them away, disappointed and dishonored. Even in the informal relations which were established, Talleyrand, in the name of the Republic, advanced and vindicated the counterclaims of France. Without dwelling at length on his argument, it is enough for the present purpose to quote certain words in a letter to Mr. Gerry of June 15, 1789: "The French Republic desires to be restored to the rights which the treaties with your Republic confer upon it, and through these means it desires to assure yours. You claim indemnities; it equally demands them; and this disposition, being as sincere on the part of the United States as it it on its part, will speedily remove all the difficulties." (French Spoliations, Ex. Doc. No. 1826, p. 529.) Thus plainly was the case stated. It was not denied that indemnities were due to the United States, but it was insisted that they were also due to France.

The two countries, once allies, were now in the most painful relations. Washington was no longer President; but his farewell address, in some of its most important parts, was evidently inspired by the counterclaims of France—especially when, from the depths of his own experience, he warned his fellow-countrymen "to steer clear of permanent alliances with any portion of the world, so far as we are at liberty now to do it;" "to have with foreign nations as little political connection as possible;" "to be constantly awake against the insidious wiles of foreign influence;" and then asked in well-known words, "Why quit our own to stand on foreign ground? Why, by interweaving our destiny with that of any part of Europe, entangle our peace and prosperity in the toils of European ambition, rivalship, interest, humor, or caprice?" In these remarkable words, where the same tone, if not the same lesson, recurs, we discern the undissembled anxieties of the hour. By the guaranty and other stipulations of 1778 our peace and prosperity had been entangled, even if our destiny had not been interwoven, in distant toils. France was urgent and brutal. War seemed impending. At last another triumvirate of plenipotentiaries, Messrs. Ellsworth, Davie, and Murray, was commissioned to attempt again the adjustment of those complications which had thus far baffled the wisdom of Washington; but compensation for the "individual" claims of American citizens was required as an indispensable condition of the treaty they were to negotiate.

Such are the counterclaims of France in origin and history. And now again we are brought to the very point where the committee had arrived in exhibiting the claims of our citizens. The plenipotentiaries on each side have met to negotiate, while the First Consul has gone to Marengo. On each side they are equally tenacious. There is a deadlock. How this was overcome belongs to the next chapter.

ADJUSTMENT BETWEEN THE UNITED STATES AND FRANCE BY THE SET-OFF AND MUTUAL RELEASE OF CLAIMS AND COUNTERCLAIMS.

III. The rules of duty and of conduct which prevail between individuals are applicable also to nations, and the proceedings on this occasion illustrate this principle. The two parties could not agree. Clearly, then, for the sake of harmony, it was essential to postpone both claims and counterclaims, with a view to future negotiation, or, if this were not done, to treat them as a set-off to each other. Such, unquestionably, would have been the action in a matter between individuals. But the history of this negotiation shows the adoption of these two modes successively. Postponement was first tried, but it gave way at last to set-off, by virtue of which the international controversy was closed. This conclusion was reached slowly and by stages, as will be seen in a simple narrative of the negotiation.

The plenipotentiaries on each side at the outset evinced a disposition to provide for reciprocal claims; but the claims specified by the American plenipotentiaries were those of "citizens of either Nation," while those specified by the French plenipotentiaries were those which "either Nation may make for itself or any of its citizens." In this difference of specification was the germ of the antagonism soon developed, especially when the American plenipotentiaries proposed to recognize the treaties and consular convention as existing only to July 7, 1798, the date of the statute by which Congress undertook to annul them. This distinction seems to have been unnecessary, for the French spoliations were clearly as much in contravention of the law of nations as of the treaties. But it furnished to the French plenipotentiaries the opportunity of declaring, under date of May 6, 1780, that "the instructions of the ministers of the French Republic have pointed out to them the treaties of alliance, friendship, and commerce, and the consular convention as the only foundations of their negotiations; that upon these acts has arisen the misunderstanding, and that upon these acts union and friendship should be established." (French Spoliations, Ex. Doc. No. 1826, p. 591.) Thus were the treaties put forward by France; and our plenipotentiaries, in their communication with their own Government, dated May 17, 1800, testify to the persistency of their efforts when they wrote, "Our success is yet doubtful. The French think it hard to indemnify for violating engagements, unless they can thereby be assured to the benefits of them." (Ibid., p. 607.) But on this point our Government was inexorable.

The return of the first consul from Italy was signalized by fresh instructions to the French plenipotentiaries, who proceeded to declare under date of August 11, 1800 (ibid., p. 616), that "the treaties which united France and the United States are not broken, and that their first proposition is to stipulate a full and entire recognition of the treaties, and the reciprocal engagements of compensation for damages resulting on both sides from their infractions." Here, again, the "individual" claims of citizens of the United States were doomed to encounter the "national" claims of France. And this communication concluded with a formal proposition in these words: "Either the ancient treaties with the privileges resulting from priority and the stipulation of reciprocal indemnities, or a new treaty without indemnity." Thus it stood—claims and counterclaims.

The American plenipotentiaries were driven to choose between an abandonment of the negotiations and an abandonment of their instructions. It was clear, from French persistency, that the treaties, with all the counterclaims, must be recognized, or the indemnities, with all the claims, must be sacrificed. The American plenipotentiaries then took the extraordinary responsibility of a proposition which not only testifies their earnest desire for a settlement, but also their sense of pressure from France. It was nothing less than a price, in money, for a release from certain stipulations; but this was to be accomplished by "a reciprocal stipulation for indemnities limited to the claims of individuals." The French plenipotentiaries, in reply, insisted upon recognition of the treaties in general terms, and also the rights of their privateers in our ports; but they offered to commute the guarantee for a sum of money. The American plenipotentiaries, hampered by the recent treaty with Great Britain, were obliged to reject this proposition; but after requiring the satisfaction of "individual" claims, they offered, in general terms, that "the former treaties should be renewed and confirmed, and have the same effect as if no misunderstanding between the two powers had occurred"; and further, that, in consideration of 8,000,000 francs, the United States shall be relased from the guarantee, and also from those other articles relating to prizes which had caused

so much embarrassment. (French Spoliations, Ex. Doc. No. 1826, pp. 615–629.) But the French plenipotentiaries assumed a new position in the following reply, under date of September 4, 1800 (ibid., 630):

"To the Ministers Plenipotentiary of the United States at Paris:

"We shall have the right to take our prizes into the ports of America.

"A commission shall regulate the indemnities which either of the two nations may owe to the citizens of the other.

"The indemnities which shall be due by France to the citizens of the United States shall be paid by the United States. And, in return for which, France yields the exclusive privilege resulting from the seventeenth and twenty-second articles of the treaty of commerce, and from the rights of guarantee of the eleventh article of the treaty of alliance.

"BONAPARTE.
"C. P. CLARET FLEURIEU.
"ROEDERER."

Here was the first proposition of set-off. On the one side were the "indemnities due by France to citizens of the United States," and on the other side were the "privileges and rights" under the treaties; but it will not fail to be remarked that the indemnities due by France were to be paid by the United States. This proposition proceeded obviously on the idea that the counterclaims of France were at least equal in value to the claims of the United States, and that the release of the former was a sufficient consideration for the assumption of the latter; but it was entirely beyond the powers of the American plenipotentiaries, who, in their reply, pronounced it "inadmissible." It revealed, however, the desire of France to escape any payment of money, as only a few days later was openly avowed by the French plenipotentiaries, "giving as one reason the utter inability of France to pay in the situation in which she would be left by the present war." (Ibid., p. 633.) This declared inability served to explain the difficulties which the American plenipotentiaries encountered. Evidently, there was a "foregone conclusion" that no money was to be paid by France. The counterclaims furnished the obvious substitute. But as these were "national," while the claims of the United States were "individual," there could be no just set-off between them, unless the American Government assured to its citizens the payment of what was due from France, according to the proposition of the French plenipotentiaries.

The American plenipotentiaries were disheartened. There was nothing in their instructions enabling them to meet the new and unexpected turn of affairs. The treaty they had striven for seemed to elude their grasp. They have recorded in their journal, under date of September 13, 1800, that "being now convinced that the door was perfectly closed against all hope of obtaining indemnities with any modification of the treaties, it only remained to be determined whether, under all circumstances, it would not be expedient to attempt a temporary arrangement." (Ibid., p. 634.) The French plenipotentiaries did not proceed to the consideration of this proposition without insisting, "first, that a stipulation of indemnities carries with it the full and entire admission of the treaties; and, secondly, that the relinquishment of the advantages and privileges stipulated by the treaties, by means of the reciprocal relinquishment of indemnities, would prove to be the most advantageous arrangement, and also the most honorable to the two nations." (Ibid., p. 636.) Here, again, was a proposition of set-off, which was repeated in other different forms.

The deadlock which clogged the negotiation, even at the beginning, was now complete. The American plenipotentiaries announced to their Government that they "were driven to quit France," or to find some other terms of adjustment. The latter alternative was adopted, and the negotiation was renewed, with the understanding "that the parties put off to another time the discussion of the indemnities and the treaties." (Ibid., p. 687.) The other questions of a general character furnished no ground of serious controversy; and the conferences proceeded tranquilly, from day to day, till September 30, 1800, when the negotiations resulted in what was entitled a "provisional treaty." The title revealing its temporary character was subsequently changed, at the request of the French plenipotentiaries, to that of convention, which it now bears in the statute book.

The convention, after declaring in its first article that "there shall be a firm, inviolable, universal peace, and a true and sincere friendship, between the French Republic and the United States of America," proceeded in the next article to stipulate as follows (Stat. L., vol. 8, p. 178):

"ART. II. The ministers plenipotentiary of the two parties not being able to agree at present respecting the treaty of alliance of February 6, 1778, the treaty of amity and commerce, of the same date, and the convention of 14th of November, 1788, nor upon the indemnities mutually due or claimed, the parties will negotiate further on these subjects at a convenient time, and until they may have agreed upon these points the said treaties and convention shall have no operation, and the relations of the two countries shall be regulated as follows."

By the language of this article, the disagreement of the two parties with regard to the early treaties and the indemnities mutually due or claimed is specifically declared, and it is then provided that "the parties will negotiate further on this subject at a convenient time," which means, of course, that hereafter, at a more auspicious moment, and with other plenipotentiaries, "the parties" will attempt to reconcile this disagreement. The whole subject, with its eight years of controversy and heartburning, was postponed. Claims and counterclaims were left to sleep, while the spirit of peace descended upon the two countries.

The convention was signed at Morfortaine, the elegant country home of Joseph Bonaparte, and the occasion was turned into a festival, illustrated afterwards by the engraving of Piranesi, where nothing was wanting that hospitality could supply. The first consul was there, with his associates in power; also Lafayette, the friend of our country, rescued from his Austrian dungeon and restored to France; and there also were the plenipotentiaries of both sides, and the American citizens then in France, all gathered in brilliant company to celebrate the establishment of concord between the two Republics. (Memoires du Roi Joseph, tom. 1, p. 94.) The first consul proposed as a toast, "The names of the French and the Americans who died on the field of battle for the independence of the New World"; so that even at this generous festival, to grace a reconciliation founded on the postponement of claims and counterclaims, the youthful chief, whose star was beginning to fill the heavens, proclaimed the undying obligations of the United States to France. This strain has been adopted also by M. Thiers, who, after referring to this convention as the first that was concluded by the consular government says: "It was natural that the reconciliation of France with the different powers of the globe should begin with that Republic to which she had in a measure given birth." But the great historian, while thus recording our obligations to France, shows how claims and counterclaims had been postponed. "The first consul," he says "had allowed the difficulties relative to the treaty of alliance, of 1778, to be adjourned; but, on the other hand, he had required the adjournment of the claims of the Americans relative to captured vessels." (Histoire du Consulat, tom. 2, liv. 7.) In this summary, the stipulations of the convention at the time of its signature are accurately stated. But, however imperfect, it was the first in that procession of peace, embracing Lunéville, Amiens, and the Concordat, which for a moment closed the temple of Janus, whose gates were left open by the revolution in France.

The ratification of the first consul followed the celebration at Morfortaine, so that the convention, with its postponement of mutual claims, was definitely accepted by France. It was otherwise in the United States, where the result was not regarded with favor. The postponement of a controversy is not a settlement, and here was nothing but postponement, leaving the old cloud still hanging over the country, ready to burst at the demand of England or of France. It was important that the early treaties, with their entangling engagements, should cease, even as a subject of future negotiation. In this spirit the Senate of the United States, when the convention was submitted for ratification, expunged the second article, providing that "the parties will negotiate further on these subjects," and limited the convention to eight years. On the 8th of February, 1801, President Adams, by proclamation, countersigned by John Marshall as Secretary of State, published the convention as duly ratified, "saving and excepting the second article, which was declared to be expunged, and of no force or validity." (Stat. L., vol. 8, p. 192.) The precise effect of this proceeding was not explained, and it remained to see how it would be regarded in France.

Were the claims on France abandoned? This was the question which occupied the attention of our minister, Mr. Murray, when charged to exchange with France the ratifications of the convention as amended by the Senate. Reporting to the Government at home his conference with the French plenipotentiaries, he said: "I fear that they will press an article of formal abandonment on our part, which I shall evade." (French Spoliations, 1826, p. 666.) He hoped to keep still another chance for indemnities. On the other hand, the French plenipotentiaries feared that an unconditional suppression of the second article would leave them exposed to the claims of the United States without any chance for their counterclaims; but they did not object to a mutual abandonment of indemnities, which Mr. Murray admitted would "always be set off against each other." (Ibid., 675.) At last the conclusion was reached, and on the 31st of July, 1801, the convention was ratified by the First Consul, with the addition by the Senate limiting it to eight years, and with the retrenchment by the Senate of the second article, the whole with a proviso by the First Consul, "That by this retrenchment the two States renounce the respective pretensions which are the object of the said article." Such were the important words of final settlement. What had been left to inference in the amendment of the American Senate was placed beyond question by this French proviso. Claims and counterclaims were not merely suspended; they were formally abandoned. The convention, with this decisive modification, was submitted to the Senate by President Jefferson and again ratified by a vote of 22 yeas to 4 nays. On the 21st of December, 1801, it was promulgated by the President in the usual form, with the supplementary proviso, and all persons were enjoined to observe and fulfill the same "and every clause and article thereof."

There is one aspect of this result which can not fail to arrest attention. Here was a release of all outstanding obligations of the United States under those famous treaties with France which assured national independence. The joy with which those treaties, ancient heralds of triumph, were originally welcomed in camp and Congress has been already portrayed, and now a kindred joy prevailed when the country, anxious and sorely tried, was at last set free from their obligations, and American commerce, venturing forth again from its banishment, brought back its treasures to pour them into the lap of the people. Strange fate! There was joy at the birth of these treaties and joy also at their death. But it was because their death had become to us, like their birth, a source of national strength and security.

Thus closed a protracted controversy, where each power was persistent to the last. Nothing could be more simple than the mode of adjustment, and nothing more equitable, if we regard the two Governments only. The claims of each were treated as a set-off to the claims of the other and mutual releases were interchanged, so that each, while losing what it claimed, triumphed over its adversary. But the triumph of the United States was at the expense of American citizens. Nothing is without price, and new duties originating in this triumph sprang into being.

ASSUMPTION OF CLAIMS BY THE UNITED STATES AND SUBSTITUTION OF UNITED STATES FOR FRANCE.

IV. The natural consequence of this set-off and mutual release was the assumption by our Government of the original obligations of France to American citizens and its complete substitution for France as the responsible debtor. This liability was completely foreseen by the American plenipotentiaries, Messrs. Pinckney, Marshall, and Gerry. These were their words, under date of November 8, 1797: "We observed to Mr. Bellamy that none of our vessels had what the French call a rôle d' équipage, and that if we were to surrender all the property which had been taken from our citizens in cases where their vessels were not furnished with such a rôle, the Government would be responsible to the citizens for the property so surrendered, since it would be impossible to undertake to assert that there was any plausibility in the allegation that our treaties required a rôle d' équipage." (French Spoliations, Ex. Doc. No. 1826, p. 467.) This admission, so important in this discussion, was so clearly in conformity with correct principles that it was naturally made even without special instructions from the Government.

Had the claims on each side been "national" no subsequent question could have occurred, for each would have extinguished the other in all respects forever. It was the peculiarity in this case that on one side the claims were "national" and on the other side "individual." But a set-off of "individual" claims against "national" claims must of course leave that Government responsible which has appropriated the "individual" claims to this purpose. The set-off and mutual release is between nation and nation; but if the claims on one side are only "individual" and not "national" the nation which by virtue of this consideration is released from "national" obligations must be substituted for the other nation as debtor, so that every "individual" whose claims are thus appropriated can confidently turn to it for satisfaction. On this point there can be no doubt, whether we regard it in the light of common sense, reason, duty, Constitution, or authority.

(1) According to common sense, any "individual" interest appropriated to a "national" purpose must create a debt on the part of the nation, still further enhanced if through this appropriation the nation

is relieved from outstanding engagements already the occasion of infinite embarrassment and hanging like a drawn sword over the future.

(2) According to reason, any person intrusted with the guardianship of particular interests becomes personally responsible with regard to them, especially if he undertakes to barter them against other interests for which he is personally responsible. Thus, an attorney sacrificing the claims of his clients for the release of his own personal obligations becomes personally liable, and so also the trustee appropriating the trust fund for any personal interest becomes personally liable. All this is too plain for argument, but it is applicable to a nation as to an individual. In the case now before your committee our Government was attorney to prosecute "individual" claims of citizens, and also trustee for their benefit, to watch and protect their interests, so that it was bound to all the responsibilities of attorney and trustee, absolutely incapacitated from any act of personal advantage, and compelled to regard all that it obtained, whatever form of value it might assume, whether money or release, as a trust fund for the original claimants.

(3) Duty also, in harmony with reason, enjoins upon government the protection of citizens against foreign spoliations and the prosecution of their claims to judgment. Claimants are powerless as "individuals." Their claims are effective only when adopted by the nation. This duty, so obvious on general principles, was reenforced in the present case by the special undertaking of Mr. Jefferson, already adduced, when he announced that he "had it in charge from the President to assure the merchants of the United States concerned in foreign commerce and navigation that due attention will be paid to any injuries they may suffer on the high seas or in foreign countries. Such a duty thus founded and thus openly assumed could not be abandoned on any inducement proceeding from France without a corresponding responsibility toward those citizens whose interests were allowed to suffer. A waiver of national duty, especially where made for the national benefit, must entail national obligation.

(4) The Constitution also plainly requires what seems so obvious to common sense, reason, and duty when it declares that "private property shall not be taken for public use without just compensation." Here "private property" to a vast amount was taken for "public use," involving the peace and welfare of the whole country; and down to this day the sufferers are petitioning Congress for that "just compensation" solemnly promised by the Constitution.

(5) Public law is also in harmony with the Constitution in this requirement. According to Vattel, the sovereign may, in the exercise of his right of eminent domain, dispose of the property and even the person of a subject by a treaty with a foreign power; "but," says this eminent authority, "as it is for the public advantage that he thus disposes of them the State is bound to indemnify the citizens who are sufferers by the transaction." (Vattel, Law of Nations, book 4, ch. 2, sec. 12.) Words more applicable to the present case could not be employed.

(6) The authority of great names confirms this liability of the United States. Among those who took part in the negotiations with France there were none but Mr. Pickering and Chief Justice Marshall who still lingered on the stage when the subject was finally pressed upon Congress. Mr. Pickering was Secretary of State under Washington and Adams and drew the instructions to our plenipotentiaries. His testimony is explicit. Without giving his statement at length, it will be enough to quote these words, in a letter dated November 19, 1824 (Mr. Clayton's speech, Senate, 1846, Appendix):

"Thus the Government bartered the just claim of our merchants on France to obtain a relinquishment of the French claim for a restoration of the old treaties, especially the burdensome treaty of alliance, by which we were bound to guarantee the French territories in America. On this view of the case it would seem that the merchants have an equitable claim for indemnity from the United States. * * * It follows, then, that if the relinquishment had not been made the present French Government would be responsible; consequently, the relinquishment by our own Government having been made in consideration that the French Government relinquished its demands for a renewal of the old treaties, then it seems clear that as our Government applied the merchants' property to buy off those old treaties the sums so applied should be reimbursed.

Chief Justice Marshall, who was one of the plenipotentiaries that attempted to secure payment of these claims from France, and afterwards, as Secretary of State, countersigned the proclamation of President Adams first promulgating the convention of 1800, has borne a testimony similar to that of Mr. Pickering. In conversation with Mr. Preston, of South Carolina, he said that "having been connected with the events of the period, and conversant with the circumstances under which the claims arose, he was, from his own knowledge, satisfied that there was the strongest obligation on the Government to compensate the sufferers by the French spoliations." (Ibid.)

Mr. B. Watkins Leigh, of Virginia, testifies that the same eminent authority said in his presence, "distinctly and positively, that the United States ought to make payment of these claims." This testimony made a particular impression upon Mr. Leigh, because he had been unfavorable to the claims.

The obligation of the United States may be inferred properly from the declared justice of the claims which had been renounced. On this point the authority is equally explicit.

Of course, in urging them upon France, earnestly and most assiduously, by successive plenipotentiaries, there was a plain adoption of these as just. But even after their abandonment they continued to be recognized as just.

Robert R. Livingston, plenipotentiary at Paris, in his correspondence with our Government, shortly after the abandonment, shows his discontent. In one of his dispatches he speaks compendiously of "the payment for illegal captures, with damages and indemnities on the one side, and the renewal of the treaties of 1778 on the other, as of equivalent value." And in another dispatch, under date of January 13, 1802, he says "he has always considered the sacrifices we have made of immense claims as a dead loss."—(French Spoliations, Ex. Doc. No. 1826, p. 704.) But this "dead loss" fell upon "individuals," and not upon the "Nation."

Mr. Madison, as Secretary of State, in his instructions to Mr. Charles Pinckney, our minister at the court of Spain, under date of February 6, 1804, upholds the justice of the claims in pregnant words, as follows (ibid., p. 795):

"The claims from which France was released were admitted by France, and the release was for a valuable consideration in a correspondent release of the United States from certain claims on them."

Thus, according to official declaration, the claims of American citizens were "admitted by France," but they were released for a valuable consideration which first inured to the benefit of the Government of the United States. Equitably that valuable consideration must belong to the claimants.

Mr. Clay, as Secretary of State, under John Quincy Adams, made a report, which had the sanction of the latter, where he testifies to the justice of the claims in the following words (ibid., p. 7):

"The pretensions of the United States arose out of the spoliations under color of French authority in contravention to law and existing treaties. Those of France sprang from the treaty of alliance of the 6th of February, 1778, the treaty of amity and commerce of the same date, and the convention of the 16th of November, 1788. Whatever obligations or indemnities from those sources either party had a right to demand were respectively waived and abandoned, and the consideration which induced one party to renounce his pretensions was that of the renunciation by the other party of his pretensions. What was the value of the obligations and indemnities so reciprocally renounced can only be matter of speculation."

Mr. Clay concludes his report by saying that the Senate, to which it is addressed, was most competent to determine how far the appropriation of the indemnities due to American citizens was "a public use of private property, within the spirit of the Constitution, and whether equitable considerations do not require some compensation to be made to the claimants."

There is one other authority of commanding character that ought not to be forgotten. It is Edward Livingston, jurist, statesman, and diplomatist, who, though not engaged in the negotiations on the subject, knew them as contemporary, and afterwards, as Senator, made a report, accepted ever since as an authentic statement of the whole case, in which he says:

"The committee think it sufficiently shown that the claim for indemnities was surrendered as an equivalent for the discharge of the United States from its heavy national obligations, and for the damages that were due for their preceding nonperformance of them. If so, can there be a doubt, independent of the constitutional provision, that the sufferers are entitled to indemnity? Under that provision, is not this right converted into one that we are under the most solemn obligations to satisfy? To lessen the public expenditure is a great legislative duty; to lessen it at the expense of justice, public faith, and constitutional right would be a crime. Conceiving that all these require that relief should be granted to the petitioners, they beg leave to bring in a bill for that purpose."

The list of authorities may be closed with that of the Emperor Napoleon, who, at St. Helena, dictated to Gourgaud the following testimony with regard to the convention of 1800:

"The suppression of this article (second of the convention) at once put an end to the privileges which France had possessed by the treaty of 1778, and annulled the just claims which America might have made for injuries done in time of peace. This was exactly what the First Consul had proposed to himself in fixing these two points as equiponderating each other. (Gourgaud's Memoirs, vol. 2, p. 129.)

Thus the head of the French Government at the time of the convention unites with the statesmen of our own country in conceding the justice of these claims.

To all this array of argument and authority the committee see no answer. They follow its teaching, when they adopt the conclusion, in which so many previous committees have already united, that these individual claims were originally just, and that the Government of the United States, having appropriated them for a "national" purpose, was substituted for France as the debtor.

OBJECTIONS.

Assuming, then, the obligations of the United States, the question occurs, What sum should be applied by Congress to its liquidation? But before proceeding to this point the committee will glance at what is urged sometimes against this obligation, so far at least as they are aware of objections.

Objections of a preliminary character have been already considered, but there are others which belong properly to this stage of the inquiry.

Curiously, the two main objections most often adduced answer each other flatly. It is sometimes insisted that the claims were invalid, by reason of the abnormal relations between France and the United States, anterior to the convention of 1800, pronounced to be a state of war; and then, again, it is sometimes insisted that these claims were provided for in the subsequent convention of 1803 for the purchase of Louisiana. But if the claims were really invalid, as has been argued, it is absurd to suppose that France would have provided for them; and if they were really provided for, it is equally absurd to suppose that they were invalid. The two objections might be dismissed as equally unreasonable; but since they have been made to play a conspicuous part, especially in presidential vetoes, the committee will occupy a brief moment in considering them.

Other objections, founded on the later convention of 1831; on the act of Congress annulling the French treaties; on the early efforts of the United States to procure satisfaction from France, and on the alleged desperate character of the claims, will be considered in their order.

WAR DID NOT EXIST BETWEEN THE UNITED STATES AND FRANCE.

The anomalous relations between France and the United States anterior to the convention of 1800 did not constitute a state of war so as to annul all pending claims; the contrary assertion is inconsistent with (1) the facts of the case; (2) the declarations of the two parties; and (3) the nature of the convention.

Before considering these several topics it may be remarked that, even if there had been a state of war, it would not follow that all prior rights otherwise valid were annulled, so at least as not to be revived at the close of the war. On at least one important occasion the contrary has been held by our Government in its negotiations with Great Britain. The provision relative to the fisheries, which appears in the treaty of 1783, was not noticed in the treaty of Ghent; and yet the United States did not hesitate to insist afterwards that, though interrupted by the war of 1812, it remained in full force after the termination of the war. Doubtless claims which, after being made the open cause of war, fall to be recognized in the treaty of peace, are annulled; for the treaty is the settlement of pending controversies between the two powers. But the claims now in question were not made the open cause even of the anomalous relations between the United States and France, and they did not fail to have such recognition in the convention terminating those relations, as to exclude all idea that they were annulled by war, or any other antecedent facts. It is not necessary to consider the effect of war; for it is easy to establish that war did not exist.

(1) The facts of the case are all inconsistent with war. There was no declaration of war on either side; and still further, throughout the whole duration of the troubles the tribunals of each country were open to citizens of the other, as in times of peace; so that a citizen of the United States was not an "alien enemy" in the courts of France, nor a Frenchman an "alien enemy" in the courts of the United States.

This fact, which was presented by Mr. Clayton in his masterly discussion of the question, is of itself most suggestive, if not conclusive.

It is true that diplomatic and commercial intercourse was suspended, that the two powers armed, and that on both sides force was employed. But this painful condition of things, though naturally causing great anxiety, did not constitute war. One power may, in its own discretion, suspend diplomatic and commercial intercourse with another; it may assume all the harness of war, and it may even use force in the way of retaliation, retortion, or reprisal; but all this falls short of war, especially when public acts and declarations show that war was not intended. Such conduct tends to war, and, if continued, naturally ends in war. But it is not of itself that mighty transformation by which one nation, with all its people, is converted into the enemy of another nation, with all its people, so that every citizen of the one becomes the enemy of every citizen of the other, and all pending rights and contracts between them disappear, at least for a time.

If war be the extinguisher of claims, it is because, in theory, the claimant is supposed to have an opportunity for reparation by seizing the property of the enemy, wherever he can find it on the high seas. But no reprisals against France were authorized by the United States; no war on private property was permitted; so that the only principle on which war is the extinguisher of claims fails to apply.

But not even an act of war constitutes war. The two parties determine if war exists. To their public acts and mutual declarations we repair for interpretation of their conduct.

(2) On the part of the United States the declarations are explicit that war did not exist, although it seemed imminent. Congress was convened in May, 1797, to deliberate on the threatening aspect of affairs, and adopt various measures of public defense, which were continued in 1798 and 1799; but in all this series of acts there is a constant and sedulous negation of the state of war. The act of May 28, 1798, after reciting that "armed vessels of France have committed depredations on the commerce of the United States, and have recently captured the vessels and property of citizens thereof on and near the coast," proceeds to authorize the seizure of any such armed vessel; but nothing is said of war. Another act, bearing date the same day, authorizes a provisional army, "in the event of a declaration of war, or of actual invasion of their territory by a foreign power, or of imminent danger of such invasion discovered before the next session of Congress." The act of June 13, 1798, to continue in force only till the next session, and renewed July 16, 1799, for a limited term, suspended commercial relations between the two countries, under penalties of forfeiture; but such acts, however menacing, are absolutely inconsistent with an existing state of war, which of itself, without any additional act, suspends all commercial relations between the belligerent parties. The act of June 25, 1798, authorizes our merchant vessels "to subdue and capture any French armed vessel from which an assault or other hostility shall be first made." The act of July 6, 1798, respecting alien enemies, begins with the words of limitation, "Whenever there shall be a declared war between the United States and any foreign nation." The act of July 7, 1798, declares the treaties as no longer "legally obligatory;" but if war existed, such an act would have been superfluous. The act of July 16, 1798, authorizes augmentation of the army "for and during the continuance of the existing differences between the United States and the French Republic." The act of March 2, 1799, also authorizes augmentation of the Army, "in case war shall break out." Another act, passed the next day, provides that certain troops already authorized shall not be raised, "unless war shall break out between the United States and some European prince, people, or State." And as late as February 10, 1800, while the negotiations were proceeding, another act was passed, providing that further enlistments should be suspended, "unless, in the recess of Congress, and during the continuance of the existing differences between the United States and the French Republic, war shall break out between the United States and the French Republic." All these cumulative measures refer to war, not as actually existing, but only as a possible future contingency. Meanwhile there were "existing differences" only. And, finally, on the 14th of May, 1800, four months before the signature of the convention, and when the plenipotentiaries on each side were at a deadlock, as has been already amply shown, another act was passed, authorizing the abandonment of the military preparations set on foot in contemplation of the contingency of war. Such is a synopsis of the testimony from congressional legislation on this point. And now, when it is considered that Congress alone, under the Constitution, has the power to declare war; that it never made any declaration of war against France, and that, throughout this whole period of trouble—in its whole series of acts—it expressly negatived the fact of war, is it not impossible to assert that, according to the understanding of our Government, war actually existed? What Congress did, and what it failed to do, testify alike.

The declarations of the Executive are as explicit as the declarations of Congress. In the instructions to our plenipotentiaries at Paris, under date of October 22, 1799, the Secretary of State, after reciting the spoliations of France, says: "This conduct of the French Republic would well have justified an immediate declaration of war on the part of the United States; but desirous of maintaining peace, and still willing to leave open the door of reconciliation with France, the United States contented themselves with preparations for defense and measures calculated to protect their commerce." (French Spoliations, Ex. Doc. No. 1826, p. 561.) These plenipotentiaries declared to the French plenipotentiaries, under date of April 16, 1800, that "the act of Congress, far from contemplating a cooperation with the enemies of the Republic, did not even authorize reprisals upon merchantmen, but were restricted solely to giving safety to our own, till a moment should arrive when their sufferings could be heard and redressed." (Ibid., p. 583.) Again, in the instructions to our minister in England, under date of September 20, 1800, the Secretary of State, who was none other than John Marshall, says: "The aggressions of one and sometimes of another belligerent power have forced us to contemplate and to prepare for war as a probable event." (Ibid., p. 452.) Not as an actual event already arrived, but only as a probable event. In the face of such declarations, who can say that war existed?

On the part of France the declarations are equally explicit. It is true that, on the 12th of September, 1800, in conversation, the French plenipotentiaries let drop fitful words to the effect that "if the question could be determined by an indifferent nation such a tribunal would say that the present state of things was war on the side of America, and that no indemnities could be claimed." (Ibid., p. 633.) But the context shows that at that moment, in order to avoid the payment of these indemnities, the plenipotentiaries were driven to every possible subterfuge, and the whole suggestion is contrary to all the admissions of the French Government, both in the executive and legislative branches. Indeed, these very plenipotentiaries of France, in a formal communication to the American plenipotentiaries, under date of August 20, 1800, declared that "the state of misunderstanding which has existed for some time between France and the United States, by the acts of some agents rather than the will of the respective Governments, has not been a state of war, at least on the side of France." (Ibid., p. 616.) We have already seen that it was not on the side of the United States. These same plenipotentiaries, under date of December 12, 1801, contented themselves with characterizing the relations of the two powers at this period as almost hostile." (Ibid., p. 559.) Already at an earlier day, Talleyrand, as minister of foreign relations, had written, under date of August 28, 1798: "France has a double motive, as a nation and as a Republic, not to expose to any hazard the present existence of the United States. Therefore, it never thought of making war against them; and every contrary supposition is an insult to common sense." (Ibid., p. 649.) When the convention, in its final form, was laid before the Legislative Assembly of France, one of the French plenipotentiaries charged with its vindication announced in a speech, November 26, 1801, that "it had terminated the misunderstanding between France and America," which, he said, had become such "that the reconciliation should be hastened if it was desired that it should not become very difficult." A report was also made to the legislative assembly by M. Adet, formerly French minister to the United States, in which it is declared: "There has not been any declaration of war. Commissions granted by the President to attack the armed vessels of France are not to be regarded as a declaration of war. The will of the President does not suffice to put America in a state of war. It requires a positive declaration of Congress to this effect. None has ever existed." (Code Diplomatique, par Portiez, tom. 1, pp. 39–57.) And these legislative documents, so positive in character, are introduced by the learned editor in words which fitly characterize the international relations to which they refer, when he says "that they exhibit the causes which ruffled the harmony of the two States." True enough. The harmony of the two States was ruffled, but war did not exist.

(3) The terms of the convention, and the final conditions of ratification, also exclude the idea of war. Although beginning with a declaration that "there shall be a firm, inviolable, and universal peace," borrowed, in precise words, from Mr. Jay's treaty with Great Britain, the convention of 1800 did not purport to be a treaty of peace; nor, indeed, as first executed, did it pretend to settle the questions between the two powers, except by postponing them to "a convenient time." A war annulling claims could not be treated in this way. The American Senate testified likewise, when it limited the duration of the convention to eight years, which, had war previously existed, would have turned the convention into a truce. The First Consul testified likewise, when he added his far-reaching proviso, for which, of course, there would have been no occasion if the claims of American citizens had been annulled by war; and again he testified, in his words at St. Helena, where he speaks of this convention as having "annulled the just claims which America might have made for injuries done in time of peace."

Thus falls to the ground that objection so often used, founded on the alleged existence of war. Strange that an objection so utterly untenable should gain a single supporter! But there is one remark which belongs to the close of this topic. Even if France had insisted that war existed, yet the United States constantly denied it at the time, both by legislative and executive acts, so that our Government is obviously estopped against its recognition, even if it fails to feel the indecency of such an excuse for any further denial of justice.

THESE CLAIMS NOT EMBRACED IN THE LOUISIANA CONVENTION.

The objection that these claims were provided for in the convention of 1803, for the purchase of Louisiana, is equally untenable. It is difficult to understand how such an objection was ever made; but the history of this question shows the strange shifts of opposition, especially when without any restraint from a knowledge of the subject. The most superficial glance at the two conventions shows that they related to two different classes of claims. Those abandoned in 1800 were on account of spoliations and were in the nature of torts. Those protected in 1803 were debts. When it is considered how steadfastly the French plenipotentiaries opposed the recognition of the claim for torts in 1800, and how the First Consul, by his positive proviso, required their renunciation, it is obviously unreasonable to assume that in 1803 they were formally recognized. This assumption becomes still more unreasonable when it is understood that it was only at a comparatively recent period that the idea was first broached; that it is without support in the documentary history of the convention or in any contemporary opinion; that it escaped the attention of the board of commissioners appointed under the convention, as it escaped the attention of successive Secretaries of State, and also of congressional committees reporting on the subject, until thus tardily it was brought forward as a last resort of opposition.

The convention of 1800, which sacrificed the claim for torts, kept alive certain pending claim for debts, in the following words:

"ART. V. The debts contracted by one of the two nations with individuals of the other, or by the individuals of one with the individuals of the other, shall be paid, or the payment may be prosecuted, in the same manner as if there had been no misunderstanding between the two States. But this clause shall not extend to indemnities claimed on account of captures of confiscation." (Stat. L., vol. 8, p. 180.)

It will be observed how carefully the claims for spoliation were excluded from the benefit of this provision, which is limited positively to debts. Though apparently plain, the French Government found difficulties in the way of its execution. Vexatious delays were interposed, and debts were treated little better than claims, so that our minister at Paris, Robert R. Livingston, was obliged to address the French Government, under date of March 25, 1802: "The fifth article of the treaty says, expressly, they shall be paid; but justice and good faith say it, independent of the treaty. Yet they remain unsatisfied; nor is the most distant hope as yet afforded them of when or how they will be paid." (French Spoliations, Ex. Doc. No. 1826, p. 714.) Such was the spirit of other correspondence. At last, by one and the same transaction, Louisiana was purchased, and these debts were provided for. The plenipotentiaries of the United States, Mr. Livingston and Mr. Monroe—the latter for a second time plenipotentiary—undertook to pay 80,000,000 francs for the purchase, of which sixty millions were for France and the remaining twenty millions for the payment of debts secured by the convention of 1800; and these terms were embodied in a treaty and two associate conventions of the same date.

The treaty contained the terms of cession. One of the conventions regulated the terms of purchase and the other provided that "the debts due by France to citizens of the United States, contracted before 30th of September, 1800, shall be paid" according to certain regulations. It will be observed that these words descriptive of the debts are not unlike those employed in the fifth article of the convention of 30th of September, 1800.

The new convention regulating the payment of debts begins with a preamble setting forth the desire of the President and of the First Consul, "in compliance with the second and fifth articles of the convention of 30th of September, 1800, to secure the payment of the sum due by France to the citizens of the United States." From the association of these two articles, some hastily infer a purpose to revive the claims abandoned in the famous second article. But such a revival, instead of being in compliance with that article or, according to the corresponding French words of the convention, en execution of that article, would be in direct contradiction of it. The allusion to the second article is obviously to carry into the Louisiana Convention the original exclusion of the spoliation claims. If any doubt could arise on this allusion, taken by itself, it would disappear when we consider that the fifth article is both inclusive and exclusive. It includes "debts contracted," which are to be paid, and it excludes "indemnities claimed on account of captures or confiscations," which are not to be paid. Thus the language of the preamble is justified, and the convention is in compliance with both the second and the fifth articles of the original convention.

If we examine the Louisiana Convention carefully, we find that debts alone are provided for. The first article, as we have already seen, declares, "the debts due by France to the citizens of the United States, contracted before the 30th of September, shall be paid according to the following regulations." The second article describes "the debts provided for in the preceding article" as comprised in a conjectural note. The third article declares how "the said debts shall be discharged by the United States." The fourth article more specifically defines the debts as follows: "It is hereby expressly agreed that the preceding articles shall comprehend no debts but such as are due to citizens of the United States who have been and are yet creditors of France, for supplies, for embargoes and prizes made at sea, in which the appeal has been properly lodged within the time mentioned in the convention of 30th of September, 1800." The fifth article explains further the prizes intended in the last article, as follows: "The preceding shall apply only (1) to captures of which the council of prizes shall have ordered restitution, it being well understood that the claimant can not have recourse to the Government of the United States otherwise than he might have had to the Government of the French Republic, and only in case of the insufficiency of captors; (2) the debts mentioned in the said fifth article of the convention of 1800, the payment of which has been heretofore claimed of the actual Government of France, and for which creditors have a right to the protection of the United States. The said fifth article does not comprehend prizes whose condemnation has been or shall be confirmed." Under the first head, the class of captures is here defined. It was those only where the council of prizes had ordered restitution, being captures not warranted by the laws of France. Such cases were included among debts because the decree of the council of prizes ordering restitution instantly created, on the part of the owner, a claim on the captor for the property or its value, and where the captor was insufficient the Government assumed the debt. And this is the only class of captures provided for in the Louisiana Convention. Under the second head is specified "the debts mentioned in the fifth article," with an express declaration that it "does not comprehend prizes whose condemnation has been or shall be confirmed." Thus in every article and at every stage the spoliation claims are excluded from the benefit of the Louisiana Convention.

Such was the contemporary conclusion of our minister at Paris, Mr. Livingston, who, in his letter to the French Government of April 7, 1802, said: "The fifth article expressly stipulates that all debts due by either Government to the individuals of the other shall be paid. But as this would also have included the indemnities for captures and condemnations previously made, and it was the intention of the contracting parties, by the second article, to preclude this payment as depending on a future negotiation, it was necessary to except from this promise of payment all that made the subject of the second article; and that as to the payment of indemnities for embargoes in consequence of the cargoes being put in requisition, or with a view to any other political measure which carried with it nothing hostile to the United States, no controversy ever arose between the plenipotentiaries of the two nations." (French Spoliations, Ex. Doc. No. 1826, p. 717.)

Surely this objection may be dismissed.

THESE CLAIMS NOT EMBRACED IN THE CONVENTION OF 1831 WITH FRANCE.

(3) Another objection has been started kindred to the last, also in kindred ignorance. It is said that these claims were embraced in the later convention of 1831 with France, under Louis Philippe. No mistake can be greater.

That convention opens with these words: "The French Government, in order to liberate itself completely from all the reclamations preferred against it by citizens of the United States for unlawful seizures, captures, sequestrations, confiscations, or destructions of their vessels, cargoes, or other property, engages to pay a sum of 25,000,000 francs to the Government of the United States, who shall distribute it among those entitled in the manner and according to the rules which it shall determine." (Stat. L., vol. 8, p. 430.)

This provision must be interpreted in the light of preceding treaties, especially of that which had occupied so much attention. They are all in pari materia, and therefore, according to a familiar rule of jurisprudence, must be taken together. But the convention of 1800, by the proviso of the First Consul, added at its ratification, liberated France completely from all liability for the claims now in question, so that they cease to be valid against her. Therefore these claimants could not be "among those entitled" under the later convention. This interpretation is confirmed by the judgment of the French Government, and also by the judgment of our own commissioners under the convention. Mr. Rives, our minister at Paris, writing to Mr. Van Buren, the Secretary of State at the time, under date of February 18, 1831, says: "From what I have been able to learn of ———'s report, it is favorable throughout to the principle of our claims. It excludes, however, the claims of American citizens in the nature of debt, or of supplies, as being alien to the general scope of the controversy between the two Governments. And also American claims of every description originating previous to the date of the Louisiana arrangement in 1803, which has been invariably alleged by this Government to be in full satisfaction of all claims then existing." (Ex. Doc. No. 147, 22d Cong., 2d sess., p. 165.)

Our own commissioners, sitting at Washington, reported to the Secretary of State, under date of December 30, 1835, that they had required every person seeking to entitle himself under the convention to show that his "claim remained unimpaired and in full force against France at the date of the convention of 1831." (Ex. Doc. No. 117, House of Representatives, 24th Cong., 1st sess., p. 4.) But the claims now in question did not come within this category. Clearly, they were not "unimpaired and in full force against France."

All this is apparent on the face; but it was demonstrated by the action of the commissioners. The experiment was made with regard to captures prior to the convention of 1800, and no less than 105 cases were submitted to the board. They were all rejected. The first rejections, in point of time, were July 11, 1833, in two different cases, when we have the following entry: "*Caroline*, captured February 10, 1798—rejected; the vessel having been captured before the 30th September, 1800." A similar entry was made on the same day in the case of the *Orlando*, captured March 1, 1800. In the larger part of the cases that followed the entry was simply rejected without any addition. It is obvious that the principle was decided in those two earliest cases. The indemnities allowed by the commissioners were mainly for captures under the decrees of Berlin, Milan, Rambouillet, and Trianon—that succession of sweeping edicts by which Napoleon at the height of power enforced his continental system. There were also four awards for captures after the signature of the convention of 1800 and before its ratification. As such cases, occurring during this intermediate period, were plainly saved from the renunciation of the convention of 1800 (article 4), and yet were not included in the convention of 1803, they came naturally within the scope of the convention of 1831. The claims now in question had no such advantage. Renounced in 1800, they were not adopted in 1831. But ceasing to be claims upon France, they have become claims upon the United States.

THESE CLAIMS NOT AFFECTED BY THE ACT OF CONGRESS ANNULLING THE FRENCH TREATIES.

(4) Then it is said that the French treaties were annulled by act of Congress so as to render the set-off and mutual release a mere form and nothing else. This objection proceeds on ignorance of the question.

It is true that the United States, by act of Congress, July 7, 1798, declared "the treaties heretofore concluded with France no longer obligatory." (Stat. L., vol. 1, p. 578.) But the question still remained, What was the effect of this act? It did not purport to be retrospective, so that all obligations under the treaties at that date were fixed, whether on the part of the United States or on the part of France. Therefore France, besides her constant liability under the law of nations, was liable also under the treaties for all depredations anterior to this date, and the United States were liable for all nonperformance of obligations anterior to this date. Assuming that the treaties were annulled, it is evident that the claims of each under them anterior to this date were not in any way affected, so that there was still even under the treaties an occasion for set-off and mutual release.

The depredations upon our commerce were not merely in violation of ancient treaties, but also of the law of nations, so that even if the treaties were annulled yet the law of nations would remain with its obligations and remedies. Our plenipotentiaries were instructed to obtain compensation for captures and condemnations contrary to the law of nations generally received in Europe, or to stipulations of treaty, so long as the latter "remained in force." On the other hand, as the treaties "remained in force" until July 7, 1798, our country was unquestionably liable to France for indemnities to that day. Before that day the West India Islands were lost. Before that day we excluded French privateers and their prizes from our ports. All proper damages for these things must have entered into the account of France against us. Therefore the annulling act of Congress could only affect the quantum of consideration on both sides at the occasion of set-off and mutual release, and not the fact of consideration.

But it is more than doubtful if the annulling act could have the effect attributed to it. Can one of two parties render a contract void by mere declaration to that effect? In a case between two individuals this could not be done. Could it be done in a case between two nations? Mr. Jefferson thought not. At least there is a report from him on another occasion which completely covers this case. These are his words: "It is desirable in many instances to exchange mutual advantages by legislative acts rather than by treaty, because the powers, though understood to be in consideration of each other, and therefore greatly respected, yet when they become too inconvenient can be dropped at the will of either party, whereas stipulations by treaty are forever irrevocable but by joint consent, let a change of circumstances render them ever so burdensome." (Wait's State Papers, vol. 10, p. 73.) Chief Justice Marshall quotes another opinion where a treaty was declared to be not only the law of the land, but a law of a superior order, "because it not only repeals past laws, but can not itself be repealed by future ones." (Marshall's Life of Washington, vol. 5, p. 274, note 2, Appendix.) Such authority would seem sufficient to settle this question, especally reenforced as it doubtless is by the law of nations; for it must not be forgotten that the obligation of treaties is determined by international law rather than by municipal law.

Even supposing that the act of Congress succeeded in annulling the treaties, its effect as regards France was not so much to discharge her claims as to make them perfect. In plain terms, it was a final determination on our part not to fulfill the treaties. Perhaps the circumstances of the time rendered it necessary; but your committee can not fail to observe that, according to all principles of justice and the established usage of nations, this very determination consummated the right of France to the indemnities claimed by her for nonobservance of the treaties. On our part there was no longer any pretense to fulfill the treaties, so that this very act of Congress which is cited to excuse us may be cited more properly to condemn us.

Whatever may be the law of this case, even assuming that, according to good opinions, the treaties were annulled on the 7th July, 1798, it is perfectly clear that at the negotiation of 1800 they were treated by France as obligatory. On these she founded her counterclaims. The narrative already presented shows her persistency. As often as our claims were urged her counterclaims were pressed in reply. But why did our plenipotentiaries ask the renunciation of the treaties by France if the act of Congress had already annulled them? Why, further, did they offer a large sum of money for release from their obligations? Whatever may have been the effect of the annulling act in the judgment of the American plenipotentiaries, it is clear that they regarded the treaties as a cloud to be removed. And it is equally clear that the French plenipotentiaries to the last maintained the obligations of the treaties. The instructions of the First Consul, before entering upon his Italian campaign, were to make "the acknowledgment of former treaties the basis of negotiation and the condition of compensation." (French Spoliations, Ex. Doc. No. 1826, p. 609.) It was the finality of these instructions which at the time caused the deadlock already described. Thus, on the part of the United States, the obligation of the treaties was denied subsequent to July 7, 1798, while on the part of France it was affirmed as an indispensable condition down to the negotiation.

Therefore, on the part of the United States, there were claims under the treaties anterior to July 7, 1798, and also under the law of nations generally. On the part of France there were counterclaims under the treaties down to the negotiation. Each side was persistent. Neither would yield. The time for compromise arrived. Then came the set-off and mutual release. The transaction was between two nations, but it was identical in character with transactions which often occur between two individuals.

EARLY PERSISTENCY TO SECURE INDEMNITIES FROM FRANCE NO GROUND OF EXEMPTION FROM PRESENT LIABILITY.

(5) Then the persistent efforts of our Government anterior to the convention of 1800 are sometimes brought forward as sufficient reason for present indifference. This also is a mistake.

It is true that our Government exerted itself much. Considering its comparative immaturity it deserves credit for the courage and determination with which it then labored. But it must not be forgotten that in all it did, even for the recovery of indemnities, it acted under the duties and instincts of national defense. Our commerce was despoiled, to the detriment of American citizens. But this grievance, which went on assuming larger proportions, proceeded directly from the hostile spirit of France, aroused by an alleged infraction of national obligations on our part, so that behind the question of indemnities rose always the question of self-defense. France made reprisals because the United States refused compliance with solemn treaties, and, as is usual in such cases, individual citizens were the sufferers. Defending the interests of these individual citizens the country itself was defended. To abandon these interests, especially without securing an abandonment of French pretensions, would have been an abandonment of the country, leaving it the dishonored victim of untold exactions without end. If this be correct—and your committee do not see how it can be controverted—there can be no boast of extraordinary efforts in the original support of these indemnities. All these efforts, whatever form they assumed, in successive remonstrances and negotiations, were in the performance of a patriotic duty, simple as the filial devotion of Cordelia, which was "according to her bond—nor more, nor less."

And now the fidelity of that early day, when duty was done, is the apology for infidelity to-day, when duty is left undone; and those patriotic efforts are vouched as a title to present exemption. Because the Government was zealous for indemnities, when France was responsible, argal it may be indifferent now, when the United States are substituted for France. Or has it come to this: That it is right to be zealous in pressing a foreign government, but not right to be zealous against ourselves when substituted for that foreign government, as in the present case? But beyond the misconception of public duty apparent in this whole pretense it forgets the true state of the question. Here, again, we are brought to the convention of 1800, when both claims and counterclaims were adjusted. If the claim on our side had been deliberately rejected, or if our Government had been compelled to withdraw, as in a case of nonsuit, the case might have been otherwise. There was no rejection of the claims and no nonsuit of our Government, but, as has been so fully shown, a set-off and mutual release by which each party accorded to its adversary just as much as it claimed for itself. So far as the two Governments were concerned, claims and counterclaims were extinguished, and neither could look to the other, but it did not follow that American citizens, whose "individual" claims had been appropriated to extinguish "national" obligations, were cut off from appeal to their own Government. On the contrary, the very zeal expressed for these claimants while they looked to France is still due in their behalf, now that, by the action of their own government, they must look to their country.

It is sometimes said in sarcasm that it is easy to be generous at the expense of another; but in this case, now that this responsibility has been transferred to our own country, it is not a question of generosity, but of debt. The property of these claimants is actually in the hands of our Government, like assets paid over and deposited "for whomsover it may concern;" or, to use a more pungent illustration, like certain property to which there can be no valid title against the original owner. Stolen goods, for instance, may be followed wherever they can be found. But the vessels of these claimants were stolen by France, and at last they are found in the hands of our own Government. Will the Government undertake to hold them against the real owners? For nearly 10 years it denounced the conduct of France as an unpardonable outrage. How, then, can it profit by this conduct, especially at the expense of its own citizens? If the receiver is as bad as the original offender, how, then, can the Government expect to escape that indignant condemnation it fastened upon France? Least of all, how can any early persistency to recover this property excuse the Government for detaining it now?

THESE CLAIMS NEVER DESPERATE, SO AS TO BE OF NO VALUE.

(6) Kindred to the last objection is the assertion that the claims were intrinsically desperate, so as to be of no value; an objection which is humiliating as false.

It is humiliating, because it assumes that claims solemnly declared to be just, both by the executive and legislative branches of the Government—the former by successive acts of diplomacy and the latter by successive acts of Congress—were of "no value." If this were true, then was our Government, when it sued these claims, guilty of national barratry, for which it would deserve to be thrown over the bar of nations. It was a stirrer of false suits. Such an imputation is an impeachment of the national character to be scorned.

But it is false, also. The claims were never "desperate," except so far as they were doomed to meet the counterclaims of France. On the contrary, they were intrinsically just, and their justice was often admitted even by France, who advanced against them her own pretensions under the treaties. And when the set-off and mutual release occurred, the validity of these claims was solemnly recognized; nay, more, they were paid to the United States. Such is the inconsistency of objectors, insisting that claims thus recognized and paid were so far "desperate" as to be of "no value," when they were of sufficient value to form the vast consideration of release from immeasurable national obligations. If you would find a measure of value for the American claims, you must look to the counterclaims of France, not forgetting that all the vehemence with which these were sustained testifies unmistakably to the claims now in question.

If we may judge from our national history, there is no reason to doubt that these claims, if they had not been released by our Government, would have been fully satisfied by France afterwards. It is in the nature of claims on foreign powers to seem desperate. Such is the case, as is well remembered, with the claims on Denmark, Spain, and Naples; but all these have been paid. No just claim by the American Government can be desperate. What claims could seem more desperate than those under the arbitrary, wide-spreading edicts of Napoleon Bonaparte in his pride of place? But President Jackson, when Louis Philippe had become king, made an appeal, as he expresses it in his message, "to the justice and magnanimity of regenerated France" (Message, Dec. 7, 1830), and even these claims, accruing under a Government which had ceased to exist, were satisfied. The claims now in question had as much intrinsic equity, and they were more intimately associated with the national sentiments. Asserting that they would have been paid, the committee are sustained not only by the reason of the case, but by the judgment of the disinterested historian of our country, who concludes his account of the convention of 1800 and its final ratification with the proviso of the first consul, in these words:

"Had the treaty been ratified in its original shape, the sufferers by the spoliations of the French might, perhaps, before now, have obtained that indemnity from the French Government which they have ever since been asking from their own, but which has hitherto been unjustly withheld." (Hildreth's History of the United States, 2d series, vol. 2, p. 400.)

There is no statute of limitations between nations, so that these claims would have been as valid against France in 1831 as they unquestionably were in 1800. A nation like the United States has only to "bide its time" and the day of justice will surely come. Indeed, President Jackson, when dwelling on the negotiations with France in 1831, bore his testimony to the vitality of American claims on foreign powers when he said that the new convention would be an "encouragement for perseverence in the demands of justice by a new proof that, if steadily pursued, they will be listened to, and an admonition will be offered to those powers, if any, which may be inclined to evade them, that they will never be abandoned." (Message of Dec. 6, 1831.) These words of Andrew Jackson are a sufficient answer to the present objection.

ALL OBJECTIONS ANSWERED.

Such are the objections to the assumption of these claims by the United States. The committee believe that they have all been answered, so that the claims stand above impeachment or question, as a debt to be liquidated and paid. It only remains to consider what sum should be appropriated for this purpose.

JUST COMPENSATION.

The "just compensation" to be paid by the United States may be regarded, according to Mr. Edward Livingston, in his classical report, in two lights: First, the value of the advantages accruing to the United States at the expense of these claimants; and, secondly, the actual loss sustained by these claimants. Neither is proposed as an absolute measure on the present occasion. A glance at each will enable us to arrive, by approximation, at a proper result.

VALUE OF ADVANTAGES SECURED TO THE UNITED STATES.

1. It is impossible to estimate in money the advantages accruing to the United States. Beyond the great boon of assured peace, under which our commerce, no longer exposed to spoliation, at once put forth more than its original life, two specific objects were gained: First, an exemption from all outstanding engagements and liabilities of every nature under the early treaties with France; and, secondly, the establishment of a new convention, which, while rejecting much-debated claims and counterclaims, provided positive advantages to the United States, among which was that payment of "debts" subsequently assured by the Louisiana convention.

If the United States could be held responsible to France for the treasure lavished on national independence, in pursuance of these original treaties, there would be an item of 1,440,000,000 francs, or about $280,000,000. Of course, the brave lives sacrificed in our cause can not be estimated in any account; but France did not forget them. Even amidst the congratulations of Morfortaine in honor of the convention the first consul reminded the joyous company of the sacrifice. Beyond the toast which he proposed in honor of those who fell in battle for the independence of the New World, there is no record of what was said on that occasion by the successful general of France; but old Homer, in one of his most touching passages, had already spoken for him:

Life is not to be bought with heaps of gold;
Nor all Apollo's Pythian treasures hold,
Or Troy once held in peace and pride of sway.
Can bribe the poor possession of a day.
Lost herds and treasures we by arms regain,
And steeds unrivaled on the dusty plain;
But from our lips the vital spirit fled,
Returns no more to wake the silent dead.

Under the sod of America and under the waves of the Atlantic Frenchmen were sleeping whose lives had been given to the support of our cause. If France did not forget them at the celebration of that convention, let it be spoken in her honor; but we can not forget them as we try to state the great account between our two countries. Their swords, if flung into the scales, would symbolize the counterclaims of France.

But how estimate the value of release from the "guaranty," retrospectively and prospectively, as well on account of past failures as future liabilities? It was often urged that the "guaranty" bound the United States to the support of France only in the event of a defensive war, and that the war in which she had been engaged was not of this character. But it is more than doubtful if either of these propositions can be maintained. The "guaranty" on its face has no limitation to defensive war. And even if it had such a limitation, who will venture to say that the war in which France drove back her multitudinous assailants, reenforced by the navies of England, was not defensive? If France did not at once require the execution of the "guaranty," it was none the less a vital obligation.

That our Government appreciated the embarrassments, if not the obligation, which the guaranty entailed has been already shown by the committee. But there are certain words which may be fitly quoted again. In the instructions of our Secretary of State to the first triumvirate of plenipotentiaries at Paris, under date of July 15, 1797, it is admitted that "our guaranty of the possessions of France in America will perpetually expose us to the risk and expense of war, or to disputes and questions concerning our national faith." (French Spoliations, Ex. Doc. No. 1826, p. 45.) On this account the plenipotentiaries were instructed to obtain a release from it, and they were authorized "on the part of the United States, instead of troops or ships of war, to stipulate for a moderate sum of money or a quantity of provisions, at the option of France, not to exceed $200,000 a year." This was moderate, but it was a recognition of the guaranty and of its practical value. But the next triumvirate, at the negotiation of 1800, offered more. They proposed to buy out the guaranty by a payment of 5,000,000 francs, or $1,000,000. It is needless to say that both these offers were rejected.

It would be as difficult to measure in money the value of that guaranty, retrospectively and prospectively, as to measure in money our obligations to France in the assurance of national independence. The liabilities for a failure prior to 1880, if pressed, would not have been inconsiderable. But had the guaranty continued so as to constrain the United States throughout the long war that followed, ending at Waterloo, what arithmetic can calculate the damages that would have ensued? Nay, more; if, at the present moment, any such guaranty bound us to France, who would not feel that it was an obligation from which we must be released at any price?

Besides the obligations of guaranty, there were other engagements with regard to French armed ships in our ports which had already proved most onerous. Here, also, there was an alleged failure on our part; and there was also the prospect of infinite embarrassment, if not of open war, unless these obligations were canceled. To keep them would cause collision with England; not to keep them would cause collision with France. Our plenipotentiaries offered, in the negotiation of 1800, 3,000,000 francs for the release from these obligations. This moderate offer was rejected also.

France continued stubborn, insisting upon the recognition of the ancient treaties, with all consequent indemnities. At last, by the propositions of the 5th of September, 1800, already exhibited by your committee, a measure of value was affixed to our engagements and liabilities. France undertook to release us from all these on condition that we would pay the indemnities due to our citizens, thus treating claims and counterclaims as equivalent in value. It was required positively that "the indemnities which shall be due by France to the citizens of the United States shall be paid by the United States." (French Spoliations, Ex. Doc. No. 1826, p. 630.) In consideration of a release from the treaties the United States were to assume the obligations of France to American claimants. How this proposition, rejected at first, eventually prevailed in the convention, and its successive amendments, has been already explained. It is now mentioned only to show the value of these engagements and liabilities from which we were released.

THE ACTUAL LOSSES OF THE CLAIMANTS.

2. The practical question remains, What were the actual losses of the claimants? Here the evidence is precise and full.

Our own Government has already, when pressing these claims upon France, given an official estimate of their value. On one occasion it put them at $15,000,000. (Wait's American State Papers, vol. 3, p. 497.) On another occasion it put them at $20,000,000. The latter estimate is found in a report from the Secretary of State to Congress, under date of January 18, 1799, where it speaks of "unjust and cruel depredations on American commerce, which have brought distress on multitudes and ruin on many of our citizens, and occasioned a total loss of property to the United States of probably more than $20,000,000." (French Spoliations, Ex. Doc. No. 1826, p. 480.) Inquiry into the losses confirms this statement. From the evidence presented to committees in former years, and now belonging to history, it appears that there were 898 vessels included in the claims released to France. This is apparent from an examination of certain details.

The American vessels despoiled by France between 1792, the outbreak of the European war, and July 31, 1801, when the convention of 1800, with its proviso, was ratified by Napoleon Bonaparte, amount to 2,000, embracing as follows: First, vessels captured by the French; secondly, vessels captured by the French and Spaniards conjointly; thirdly, vessels detained by embargo at Bordeaux. The following list shows how the account now stands:

List of vessels in different classes despoiled by France.

Whole number		2,290
From which deduct as follows:		
1. Vessels paid for by special decrees of France	14	
2. Vessels paid for under the convention of 1803, viz:		
For embargoes	103	
For contracts	270	
For prizes under restoration	6	
	379	
3. Vessels rejected under convention of 1803 for contracts on supplies	102	
Vessels under restitution, and rejected	26	
	128	
4. Vessels paid for by Spain under the Florida treaty of 1819	173	
5. Vessels rejected under Florida treaty	191	
6. Vessels paid for under convention with France of July 4, 1831, being for captures between the signing and ratification of the convention of 1800	4	
7. Vessels rejected for want of merit, neglect of claimants, loss of proof, and other contingencies, say	503	
	1,392	
		898

Thus we are brought again to the 898 vessels which were bartered to France.

To arrive at the value of these vessels, the committee have been driven to look at the value affixed to vessels under the conventions with other powers for the payment of similar claims. Here is a list allowed by different powers, with the average of each vessel:

	Vessels.	Averages.
Great Britain	217	$47,672.81
Spain	40	8,136.49
France	357	10,504.20
Spain	320	15,625.00
Denmark	112	5,981.17
France	361	12,984.71
Naples	51	37,745.00
Spain	20	30,000.00
Mexico	64	31,653.43
Colombia	5	11,474.53
Total	1,547	221,788.34

From this list it appears that Mexico has paid as high an average as $31,000 for each vessel; Naples, $37,000; and Great Britain, $47,000. But the general average is $14,336.

If the vessels despoiled by France were estimated according to the highest average, especially according to the average of the vessels despoiled contemporaneously by Great Britain, the sum total of value would swell to a large amount, being no less than $42,206,000. Adopting the general average of the whole list, the 898 vessels amounted in value to $12,572,000.

This estimate, which at first view seems inconsistent with the statement of our Government, in 1799, fixing the losses at twenty millions, is substantially sustained by this statement, even putting the value of the vessels at an average of $14,000; for the list of vessels despoiled by France shows that there were certain classes which may properly be deducted. Here is the estimate, with the deductions:

Original estimate of 1799		$20,000,000
Deduct therefrom—		
1. Vessels paid for by France, 52 cases, at $14,000	$728,000	
2. Debts paid under convention of 1803	3,750,000	
3. French spoliations paid for under treaty with Spain of 1819	2,845,619	
		7,323,619
Sum total, after deductions		12,676,380

If to this estimate interest be added, even at the smallest rate, the losses of these sufferers will assume much larger proportions. More than 60 years have run their course since the United States, by a public act and for a valuable consideration, became the debtor of these claimants. From the beginning the country has enjoyed without price all the national benefits, originally secured at their expense, as part of the national capital, with its bountiful income, while these claimants have been shut out from all use of their property and all profit therefrom. If interest be due on any national debt, it is difficult to see why it is not due here.

Never was a case stronger. Nor does there seem to be any doubt with regard to the rule. According to the best authorities, whether publicists or courts, interest in justly due. Though swelling the national liability enormously, it is none the less an item in the case.

Here it must be borne in mind that these claims are under the law of nations. As such the rule of damages is in the law of nations and not in municipal law. Therefore the committee resort to the former law. Among all the authorities none has spoken more fully and clearly than Rutherforth; nor is there anyone whose words on this point are oftener cited. Here is the rule:

"In estimating the damages which anyone has sustained, when such things as he has a perfect right to are unjustly taken from him, or withholden, or intercepted, we are to consider not only the value of the thing itself, but the value likewise of the fruits or profits that might have arisen from it. He who is the owner of the thing is likewise the owner of such fruits or profits. So that it is as properly a damage to be deprived of them as it is to be deprived of the thing itself." (Institutes, Lib. 1, ch. 17, sec. 5.)

Grotius says substantially the same (Grotius, Jura Belli ac Pacis, Lib. ii., cap. 17, sec. 4). So does Vattel, who declares that claimants may obtain "what is due, together with interest and damages." (Vattel, Law of Nations, Book II, chap. 18, sec. 342.) And Wheaton copies Vattel (Wheaton, Elements of Inter. Law, p. 341). The Supreme Court of the United States gives the same rule with simplicity when it declares:

"The prime cost or value of property lost, and, in cases of injury, the diminution in value by reason of injury, with interest thereon, affords the true rule of estimating damages in such cases." (The Amiable Nancy, 3 Wheat., 546.)

Mr. Justice Story makes it simpler still:

"The proper measure of damages, in cases of illegal capture, is the prime value and interest to the day of judgment." (The Lively, 1 Gall., 315.)

Such is the law of interest applicable to these claims, and the committee refer to it now as illustrating the accumulated losses which await satisfaction at the hands of Congress.

RECOMMENDATIONS OF THE COMMITTEE.

3. The committee, impressed by the original justice of these claims and the present obligation of the United States, do not hesitate to recommend their liquidation and payment at an early day, as they would recommend the discharge of a national debt. While setting forth the unanswerable evidence of their value, they content themselves with the recommendation made many years ago, and repeated by successive committees of both Houses of Congress, limiting the appropriation to a sum not exceeding $5,000,000, without interest, to be distributed by a board of commissioners pro rata among the claimants, according to the provisions of the bill reported herewith. The proposed limitation is a departure from strict justice, but it is a part of the additional sacrifice which seems to have been expected by Congress from these long-suffering claimants.

In deference to the Secretary of the Treasury, who, when consulted on the subject, objected to the creation of a stock for this special purpose, as has been provided in former bills, it is now proposed that the money shall be paid whenever Congress shall make an appropriation therefor.

By positive description the bill is made to cover claims for illegal captures and condemnation prior to July 31, 1801, the date of the final ratification of the convention. But, by positive words of exclusion, it is provided that the bill shall not cover claims originally embraced in the Louisiana convention of 1803; in the treaty with Spain of February 22, 1819; or in the convention with France of July 4, 1831; so that, in point of fact, the bill is carefully limited to those original claims which, after being postponed by the second article of the convention of 1800, were, at its final ratification, definitely renounced by the United States in consideration of equivalent renunciations from France.

CONCLUSION.

The committee have now finished the review which, in the discharge of public service, they were called to make. Approaching a much-vexed question without prejudice, they have striven to consider it with candor, in the hope of ascertaining and exhibiting the requirements of duty. The conclusion they have been led to adopt, in harmony with so many previous committees of both Houses, and also with Congress itself, which has twice enacted a law for the satisfaction of these claims, is now submitted to the judgment of the Senate.

How the committee have reached this conclusion will be seen by a final glance at the field which has been traversed. Putting aside the

three preliminary objections to these claims, (1) that they are ancient and stale; (2) that they have passed into the hands of speculators; and (3) that they should be postponed on account of the present condition of public affairs, the committee have considered in order four principal topics: First, the claims of American citizens on France, as they appear in the history of the times; secondly, the counterclaims of France, as they, too, appear in the history of the times; thirdly, how the individual claims of American citizens were sacrificed to procure a release of the national claims of France by a proceeding in the nature of set-off and mutual release; and, fourthly, how the United States, for a valuable consideration, assumed the obligations of France, so as to become completely responsible therefor. Not content with showing affirmatively the merits of the claimants, the committee next examined carefully all known objections to the asserted responsibility of the United States, establishing negatively: (1) that the relations between France and the United States were at no time such as to constitute a state of war, invalidating the claims; (2) that these claims were not embraced in the convention for the purchase of Louisiana; (3) that they were not embraced in the later convention of 1831; (4) that the alleged annulling of the French treaties by act of Congress did not affect the claims; (5) that the early efforts of our Government with France, for the satisfaction of these claims, can furnish no ground of exemption from present liability; and (6) that the claims at the time of their abandonment were not desperate, so as to be of no value.

With the removal of all known objections, the way was open to consider the extent of "just compensation" under three different heads: (1) the advantages secured to the United States by the sacrifice of these claimants; (2) the actual losses of these claimants; and (3) the final recommendations of the committee.

Such is the whole case in its divisions and subdivisions. There is one reflection which belongs naturally to the close. These claims have survived several generations, entwining themselves each year with the national history. Meanwhile, the Republic, for whose advantage they were sacrificed, has outgrown the puny condition of that early day, when its commerce was the prey of France, and when even the sacred debt for independence was left unpaid. These claimants have been called to remark the glorious transformation, by which the weak has become strong, and the poor has become rich; with glistening eye they have followed the flag of the country as it was carried successfully in every sea; with sympathetic heart they have heard the name of the country sounded with honor in every land; and now they joyfully witness the unexampled resources with which it upholds the national cause against an unexampled rebellion; but these claimants have been called to observe especially how, for many years, unchecked by hindrances, the National Government labored successfully with foreign powers to secure justice for despoiled citizens, until all nations—Great Britain, Spain, Denmark, Naples, Holland, Mexico, Colombia, Peru, and Chile—have yielded to persistent negotiations, and even France has paid indemnities to our citizens for spoliations subsequent to these very claims; all this history these claimants have observed with pride. But how can they forbear to exclaim at the sacrifice that has been required of them—that they alone, the pioneers of our commercial flag, are compelled "in suing long to bide," while a part of the debt for national independence is cast upon their shoulders, and the whole country enjoys priceless benefits at their expense? Well may these disappointed suitors, hurt by unfeeling indifference to their extensive losses, and worn with infinite delay, cry out in bitterness of heart, "Give us back our vessels." But this can not be done. It only remains that Congress should pay for them.

APPENDIX A.

List of reports of committees.

No.	Where reported.	By whom reported.	Committee.	Date.	Bills and reports.	Detailed reports.
1	House	Mr. Giles[1]	Select	April 22, 1802		R.
2	House	Mr. Marion[2]	Select	Feb. 18, 1807		R.
3	Senate	Mr. Roberts	Claims	Mar. 3, 1818	Adverse, No. 124	R.
4	House	Mr. Russell	Foreign Affairs	Jan. 31, 1822	Adverse, No. 32	R.
5	House	Mr. Forsyth	Foreign Affairs	Mar. 25, 1824	Adverse, No. 94	R.
6	Senate	Mr. Holmes	Select	Feb. 8, 1827	Favorable, No. 48	R.
7	House	Mr. E. Everett	Foreign Affairs	May 21, 1828	Favorable, No. 262	R.
8	Senate	Mr. Chambers	Select	May 24, 1828	Favorable, bill 206	R.
9	Senate	Mr. Chambers	Select	Feb. 11, 1829	Favorable, bill 76	R.
10	House	Mr. E. Everett	Foreign Affairs	Feb. 16, 1829	Favorable, bill 82	R.
11	Senate	Mr. E. Livingston	Select	Feb. 22, 1830	Favorable, bill 103	R.
12	Senate	Mr. E. Livingston	Select	Dec. 21, 1830	Favorable, bill 31	R.
13	Senate	Mr. E. Livingston	Select	Jan. 14, 1831	Favorable, bill 32	
14	Senate	Mr. Webster[3]	Select	Dec. 10, 1834	Favorable, bill 5	
15	Senate	Mr. Wilkins	Select	Dec. 20, 1831	Favorable, bill 9	
16	House	Mr. E. Everett	Foreign Affairs	Feb. 21, 1835	Favorable	121 R.
16	House	Mr. Cambreling	Foreign Affairs		Minority adverse statement	
17	House	Mr. Howard	Foreign Affairs	Jan. 29, 1838	Favorable, bill 452	R.
18	House	Mr. Cushing[4]		Mar. 31, 1838	Favorable, statement	R.
19	House	Mr. Cushing	Foreign Affairs	Apr. 4, 1840	Favorable	319 R.
19	House	Mr. Pickens	Foreign Affairs		Minority adverse statement	
20	House	Mr. Cushing	Foreign Affairs	Dec. 9, 1841	Favorable, bill 57	R.
21	Senate	Mr. Choate	Foreign Relations	Jan. 28, 1862	Favorable, bill 148	
22	Senate	Mr. Archer	Foreign Relations	Jan. 5, 1843	Favorable, bill 64	
23	House	Mr. C. J. Ingersoll	Foreign Affairs	Apr. 17, 1844	Favorable, bill 339	
24	Senate	Mr. Choate	Foreign Relations	May 29, 1844	Favorable, bill 180	
25	Senate	Mr. Choate[5]	Foreign Relations	Dec. 23, 1844	Favorable, bill 47	
26	Senate	Mr. Clayton[6]	Select	Feb. 2, 1846	Favorable, bill 68	
27	House	Mr. Tru. Smith[7]	Foreign Affairs	July 16, 1846	Favorable, bill 68	
28	Senate	Mr. Morehead	Select	Feb. 10, 1847	Favorable, bill 156	R.
29	House	Mr. Tru. Smith	Foreign Affairs	Jan. 4, 1848	Favorable, bill 21	
30	Senate	Mr. Tru. Smith	Select	Feb. 5, 1850	Favorable, bill 101	R.
31	House	Mr. Buel	Foreign Affairs	June 14, 1850	Favorable, bill 318	
32	Senate	Mr. Tru. Smith[8]	Select	Jan. 24, 1851	Favorable, bill 101	
33	Senate	Mr. Bradbury	Select	Jan. 14, 1852	Favorable, bill 64	R.
34	Senate	Mr. Hamlin	Select	Feb. 15, 1854	Favorable, bill 36	
35	House	Mr. Bayly[9]	Foreign Affairs	Jan. 4, 1855	Favorable, bill 117	
36	House	Mr. Pennington	Foreign Affairs	Mar. 3, 1857	Favorable, bill 865	
37	Senate	Mr. Crittenden[10]	Select	Feb. 4, 1858	Favorable, bill 45	R.
38	House	Mr. Clingman	Foreign Affairs	May 5, 1858	Favorable, bill 552	
39	House	Mr. Royce	Foreign Affairs	Mar. 29, 1860	Favorable, bill 259	R.
40	Senate	Mr. Crittenden	Select	June 11, 1860	Favorable, bill 428	
41	Senate	Mr. Sumner	Foreign Relations	Jan. 13, 1862	Favorable, bill 114	
42	Senate	Mr. Sumner	Foreign Relations	Jan. 20, 1863	Favorable, bill 114	

[1] Favorable statement of facts, without coming to any conclusion.
[2] Favorable, including and adopting Mr. Giles's report of Apr. 22, 1802.
[3] This bill was voted by the Senate, Feb. 3, 1835—yeas 25, nays 20.
[4] Individual, by consent of the House.
[5] This bill was ordered to be engrossed and read a third time, Feb. 10, 1845, by yeas 26, nays 15, but not reached.
[6] This bill was voted by the Senate on the 9th of June, 1846—yeas 27, nays 33.
[7] This bill (being Mr. Clayton's bill as voted by the Senate) was voted by the House by yeas 94, nays 87. It thus passed both Houses, and was vetoed by President Polk as a Senate bill; and on the veto the Senate voted yeas 27, nays 15—not two-thirds.
[8] This bill was voted by the Senate—yeas 30, nays 26.
[9] This bill was voted by the House, yeas 111, nays 77; and was voted by the Senate Feb. 6, 1855, yeas 28, nays 17, and was vetoed by President Pierce as a House bill; and the House vote on the veto was yeas 113, nays 81—not a two-thirds—so the bill was lost.
[10] This bill (Mr. Crittenden's, No. 45) was voted by the Senate on the 10th January, 1859—yeas 26, nays 20.

FRENCH SPOLIATIONS.

Speech of Daniel Webster in the United States Senate, Monday, January 12, 1835.

The Senate then proceeded to the special order of the day, being the French spoliations bill.

Mr. Webster rose and said that, before proceeding to the discussion of the bill, he felt it to be his duty to take notice of an occurrence such as did not ordinarily draw from him any remarks in his place in the Senate.

Some time last March (said Mr. Webster) there appeared in a newspaper published at Albany, in the State of New York, a letter purporting to have been written to the editor, from Washington, in which the writer charged me with having a direct personal interest in these claims. I am ashamed to say that this letter was written by a Member of Congress. The assertion, like many others which I have not felt it to be my duty to take any notice of, was wholly and entirely false and malicious. I have not the slightest interest in these claims, or any one of them. I have never been conferred with or retained by anyone, or spoken to as counsel for any of them, in the course of my life. No Member of the Senate is more entirely free from any personal connection with the claims than I am. It has been the pleasure of the Senate, on several occasions, to place me on a committee to which these petitions have been referred. I have on those occasions examined the subject with a desire to acquit myself conscientiously, by exercising my best judgment upon the claims, as questions of mere right and justice.

At the last session an honorable Member of the Senate, now in a public capacity at St. Petersburg, introduced a bill for the relief of the petitioners, and moved the appointment of a committee, declining himself to be a member of that committee. Without any wish of mine, and, indeed, without my knowledge, for I was not then in the city, the Senate was pleased to place me at the head of that committee. I thought it my duty then to introduce the bill, which was now again under consideration.

This (said Mr. Webster) is no party question; it involves no party principles; affects no party interests; seeks no party ends or objects; and as it is a question of private right and justice, it would be flagrant wrong and injustice to attempt to give to it, anywhere, the character of a party measure. The petitioners, the sufferers under the French spoliations, belong to all parties. Gentlemen of distinction, of all parties, have at different times maintained the justice of the claim. The present bill is intended for the equal relief of all sufferers; and if the measure shall become a party measure, I for one shall not pursue it. It will be wiser to leave it till better auspices shall appear.

The question, sir, involved in this case is essentially a judicial question. It is not a question of public policy, but a question of private right; a question between the Government and the petitioners; and, as the Government is to be judge in its own case, it would seem to be the duty of its Members to examine the subject with the most scrupulous good faith and the most solicitous desire to do justice.

There is a propriety in commencing the examination of these claims in the Senate, because it was the Senate which, by its amendment of the treaty of 1800, and its subsequent ratification of that treaty, and its recognition of the declaration of the French Government effectually released the claims as against France and forever cut off the petitioners from all hopes of redress from that quarter. The claims, as claims against our own Government, have their foundation in these acts of the Senate itself; and it may certainly be expected that the Senate will consider the effects of its own proceedings, on private rights and private interests, with that candor and justice which belong to its high character.

It ought not to be objected to these petitioners, that their claim is old, or that they are now reviving anything which has heretofore been abandoned. There has been no delay which is not reasonably accounted for. The treaty by which the claimants say their claims on France for these captures and confiscations were released was concluded in 1800. They immediately applied to Congress for indemnity, as will be seen by the report made in 1802, in the House of Representatives, by a committee of which a distinguished Member from Virginia, not now living [Mr. Giles], was chairman.

In 1807, on the petition of sundry merchants and others, citizens of Charleston, in South Carolina, a committee of the House of Representatives, of which Mr. Marion, of that State, was chairman, made a report, declaring that the committee was of opinion that the Government of the United States was bound to indemnify the claimants. But at this time our affairs with the European powers at war had become exceedingly embarrassed; our Government had felt itself compelled to withdraw our commerce from the ocean; and it was not until after the conclusion of the War of 1812, and after the general pacification of Europe, that a suitable opportunity occurred of presenting the subject again to the serious consideration of Congress. From that time the petitioners have been constantly before us, and the period has at length arrived proper for a final decision of their case.

Another objection, sir, has been urged against these claims, well calculated to diminish the favor with which they might otherwise be received, and which is without any substantial foundation in fact. It is that a great portion of them has been bought up as a matter of speculation, and it is now holden by these purchasers. It has even been said, I think, on the floor of the Senate that nine-tenths, or ninety-hundredths, of all the claims are owned by speculators.

Such unfounded statements are not only wholly unjust toward these petitioners themselves, but they do great mischief to other interests. I have observed that a French gentleman of distinction, formerly a resident in this country, is represented in the public newspapers as having declined the offer of a seat in the French administration on the ground that he could not support the American treaty, and he could not support the treaty because he had learned or heard while in America that the claims were no longer the property of the original sufferers, but had passed into unworthy hands. If any such thing has been learned in the United States, it has been learned from sources entirely incorrect. The general fact is not so, and this prejudice, thus operating on a great national interest—an interest in regard to which we are in danger of being seriously embroiled with a foreign State—was created, doubtless, by the same incorrect and unfounded assertions which have been made relative to this other class of claims.

In regard to both classes and to all classes of claims of American citizens on foreign Governments the statement is at variance with the facts. Those who make it have no proof of it. On the contrary, incontrovertible evidence exists of the truth of the very reverse of the statement. The claims against France since 1800 are now in the course of adjudication. They are all, or very nearly all, presented to the proper tribunal. Proofs accompany them, and the rules of the tribunal require that in each case the true ownership should be fully and exactly set out, on oath, and be proved by the papers, vouchers, and other evidence. Now, sir, if any man is acquainted or will make himself acquainted with the proceedings of this tribunal so far as to see who are the parties claiming the indemnity, he will see the absolute and enormous error of those who represent these claims to be owned, in great part, by speculators.

The truth is, sir, that these claims, as well those since 1800 as before, are owned and possessed by the original sufferers, with such changes only as happen in regard to all other property. The original owner of ship and cargo; his representative, where such owner is dead; underwriters, who have paid losses on account of captures and confiscation; and creditors of insolvents and bankrupts, who were interested in the claims—these are the descriptions of persons who, in all these cases, own vastly the larger portion of the claims. This is true of the claims on Spain, as is most manifest from the proceedings of the commissioners under the Spanish treaty. It is true of the claims on France arising since 1800, as is equally manifest by the proceedings of the commissioners now sitting; and it is equally true of the claims which are the subject of this discussion and provided for in this bill. In some instances claims have been assigned from one to another in the settlement of family affairs. They have been transferred, in other instances, to secure or to pay debts; they have been transferred sometimes in the settlement of insurance accounts; and it is probable there are a few cases in which the necessities of the holders have compelled them to sell them. But nothing can be further from the truth than that they have been the general subjects of purchase and sale, and that they are now holden mainly by purchasers from the original owners. They have been compared to the unfunded debt. But that consisted in scrip, of fixed amount, and which passed from hand to hand by delivery. These claims can not so pass from hand to hand. In each case, not only the value but the amount is uncertain. Whether there be any claim is in each case a matter for investigation and proof, and so is the amount, when the justice of the claim itself is established.

These circumstances are of themselves quite sufficient to prevent the easy and frequent transfer of the claims from hand to hand. They would lead us to expect that to happen which actually has happened; and that is that the claims remain with their original owners, and their legal heirs and representatives, with such exceptions as I have already mentioned. As to the portion of the claims now owned by underwriters, it can hardly be necessary to say that they stand on the same equity and justice as if possessed and presented by the owners of ships and goods. There is no more universal maxim of law and justice, throughout the civilized and commercial world, than that an underwriter, who has paid a loss on ships or merchandise to the owner, is entitled to whatever may be received from the property. His right accrues by the very act of payment; and if the property, or its proceeds, be afterwards recovered, in whole or in part, whether the recovery be from the sea, from captors, or from the justice of foreign States, such recovery is for the benefit of the underwriter. Any attempt, therefore, to prejudice these claims, on the ground that many of them belong to insurance companies or other underwriters, is at war with the first principles of justice.

A short but accurate general view of the history and character of these claims is presented in the report of the Secretary of State, on the 20th of May, 1826, in compliance with a resolution of the Senate. Allow me, sir, to read the paragraphs:

"The Secretary can hardly suppose it to have been the intention of the resolution to require the expression of an argumentative opinion as to the degree of responsibility to the American sufferers from French spoliations, which the convention of 1800 extinguished on the part of France, or devolved on the United States, the Senate itself being most competent to decide that question. Under this impression he hopes that he will have sufficiently conformed to the purposes of the Senate, by a brief statement, prepared in a hurried moment, of what he understands to be the question.

"The second article of the convention of 1800 was in the following words: 'The ministers plenipotentiary of the two parties not being able to agree at present respecting the treaty of alliance of the 6th of February, 1778, the treaty of amity and commerce of the same date, and the convention of the 14th of November, 1788, nor upon the indemnities mutually due or claimed, the parties will negotiate further on these subjects at a convenient time; and until they may have agreed upon these points, the said treaties and convention shall have no operation, and the relations of the two countries shall be regarded as follows.'

"When that convention was laid before the Senate, it gave its consent and advice that it should be ratified, provided that the second article be expunged, and that the following article be added or inserted: 'It is agreed that the present convention shall be in force for the term of eight years from the time of the exchange of the ratifications;' and it was accordingly so ratified by the President of the United States on the 18th day of February, 1801. On the 31st of July of the same year it was ratified by Bonaparte, First Consul of the French Republic, who incorporated in the instrument of his ratification the following clause as part of it: 'The Government of the United States having added to its ratification that the convention should be in force for the space of eight years and having omitted the second article, the Government of the French Republic consents to accept, ratify, and confirm the above convention, with the addition importing that the convention shall be in force for the space of eight years and with the retrenchment of the second article: *Provided*, That by this retrenchment the two States renounce the respective pretensions which are the object of the said article.'"

The French ratification being thus conditional was, nevertheless, exchanged against that of the United States at Paris on the same 31st of July. The President of the United States considering it necessary again to submit the convention in this State to the Senate, on the 19th day of December, 1801, it was resolved by the Senate that they considered the said convention as fully ratified and returned it to the President for the usual promulgation. It was accordingly promulgated and thereafter regarded as a valid and binding compact. The two contracting parties thus agreed, by the retrenchment of the second article, mutually to renounce the respective pretensions which were the object of that article. The pretensions of the United States, to which allusion is thus made, arose out of the spoliations under color of French authority in contravention of law and existing treaties. Those of France sprung from the treaty of alliance of the 6th of February, 1778, the treaty of amity and commerce of the same date, and the convention of the 14th of November, 1788. Whatever obligations or indemnities from these sources either party had a right to demand were respectively waived and abandoned, and the consideration which induced one party to renounce his pretensions was that of renunciation by the other party of his pretensions. What was the value of the obligations and indemnities so reciprocally renounced can only be matter of speculation. The amount of the indemnities due to the citizens of the United States was very large; and, on the other hand, the obligation was great (to specify no other French pretensions) under which the United States were placed in the eleventh article of the treaty of alliance of the 6th of February, 1778, by which they were bound forever to guarantee from that time the then possessions of the Crown of France in America, as well as those which it might acquire by the future treaty of peace with Great Britain; all these possessions having been, it is believed, conquered at or not long after the exchange of the ratifications of the convention of September, 1800, by the arms of Great Britain from France.

The fifth article of the amendments to the Constitution provides: "Nor shall private property be taken for public use without just compensation." If the indemnities to which citizens of the United States were entitled for French spoliations prior to the 30th of September, 1800, have been appropriated to absolve the United States from the fulfillment of an obligation which they had contracted, or from the payment of indemnities which they were bound to make to France, the Senate is most competent to determine how far such an appropriation is a public use of private property within the spirit of the Constitution, and whether equitable considerations do not require some compensation to be made to the claimants. The Senate is also best able to estimate the probability which existed of an ultimate recovery from France of the amount due for those indemnities, if they had not been

renounced; in making which estimate it will, no doubt, give just weight to the painful consideration that repeated and urgent appeals have been, in vain, made to the justice of France for satisfaction of flagrant wrongs committed upon property of other citizens of the United States subsequent to the period of the 30th of September, 1800.

Before the interference of our Government with these claims, they constituted just demands against the Government of France. They were not vague expectations of possible future indemnity for injuries received, too uncertain to be regarded as valuable, or be esteemed property. They were just demands, and as such they were property. The courts of law took notice of them as property. They were capable of being devised, of being distributed among heirs and next of kin, and of being transferred and assigned like other legal and just debts. A claim or demand for a ship unjustly seized and confiscated is property, as clearly as the ship itself. It may not be so valuable or so certain; but it is as clear a right, and has been uniformly so regarded by the courts of law. The papers show that American citizens had claims against the French Government for 615 vessels unlawfully seized and confiscated.

If this were so, it is difficult to see how the Government of the United States can release these claims for its own benefit, with any more propriety than it could have applied the money to its own use, if the French Government had been ready to make compensation, in money, for the property thus illegally seized and confiscated; or how the Government could appropriate to itself the just claims which the owners of these 615 vessels held against the wrongdoers, without making compensation, any more than it could appropriate to itself, without making compensation, 615 ships which had not been seized. I do not mean to say that the rate of compensation should be the same in both cases; I do not mean to say that a claim for a ship is of as much value as a ship; but I mean to say that both the one and the other are property, and that Government can not, with justice, deprive a man of either, for its own benefit, without making a fair compensation.

It will be perceived at once, sir, that these claims do not rest on the ground of any neglect or omission on the part of the Government of the United States in demanding satisfaction from France. That is not the ground. The Government of the United States, in that respect, performed its full duty. It remonstrated against these illegal seizures; it insisted on redress; it sent two special missions to France, charged expressly, among other duties, with the duty of demanding indemnity. But France had her subjects of complaint, also, against the Government of the United States, which she pressed with equal earnestness and confidence, and which she would neither postpone nor relinquish, except on the condition that the United States would postpone or relinquish these claims. And to meet this condition, and to restore harmony between the two nations, the United States did agree, first to postpone, and afterwards to relinquish, these claims of its own citizens. In other words, the Government of the United States bought off the claims of France against itself, by discharging claims of our own citizens against France.

This, sir, is the ground on which these citizens think they have a claim for reasonable indemnity against their own Government. And now, sir, before proceeding to the disputed part of the case, permit me to state what is admitted.

In the first place, then, it is universally admitted that these petitioners once had just claims against the Government of France on account of these illegal captures and condemnations.

In the next place, it is admitted that these claims no longer exist against France, that they have, in some way, been extinguished or released, as to her; and that she is forever discharged from all duty of paying or satisfying them, in whole or in part.

These two points being admitted, it is then necessary, in order to support the present bill, to maintain four propositions:

1. That these claims subsisted against France up to the time of the treaty of September, 1800, between France and the United States.

2. That they were released, surrendered, or extinguished, by that treaty, its amendment in the Senate, and the manner of its final ratification.

3. That they were thus released, surrendered, or extinguished, for political and national considerations, for objects and purposes deemed important to the United States, but in which these claimants had no more interest than any other citizens.

4. That the amount or measure of indemnity proposed by this bill is no more than a fair and reasonable compensation, so far as we can judge by what has been done in similar cases.

I. Were these subsisting claims against France up to the time of the treaty? It is a conclusive answer to this question to say that the Government of the United States insisted that they did exist up to the time of the treaty, and demanded indemnity for them, and that the French Government fully admitted their existence and acknowledged its obligation to make such indemnity.

The negotiation which terminated in the treaty was opened by a direct proposition for indemnity made by our ministers, the justice and propriety of which was immediately acceded to by the ministers of France.

On the 7th of April, 1800, in their first letter to the ministers of France, Messrs. Ellsworth, Davie, and Murray say:

"CITIZEN MINISTERS: The undersigned, appreciating the value of time and wishing by frankness to evince their sincerity, enter directly upon the great object of their mission, an object which they believe may be best obtained by avoiding to retrace minutely the too-well known and too painful incidents which have rendered a negotiation necessary.

"To satisfy the demands of justice and render a reconciliation cordial and permanent they propose an arrangement such as shall be compatible with national honor and existing circumstances to ascertain and discharge the equitable claims of the citizens of either Nation upon the other, whether founded on contract, treaty, or the law of nations. The way being thus prepared, the undersigned will be at liberty to stipulate for that reciprocity and freedom of commercial intercourse between the two countries which must essentially contribute to their mutual advantage.

"Should this general view of the subject be approved by the ministers plenipotentiary to whom it is addressed, the details, it is presumed, may be easily adjusted and that confidence restored which ought never to have been shaken."

To this letter the French ministers immediately returned the following answer:

"The ministers plenipotentiary of the French Republic have read attentively the proposition for a plan of negotiation which was communicated to them by the envoys extraordinary and ministers plenipotentiary of the United States of America.

"They think that the first object of the negotiation ought to be the determination of the regulations and the steps to be followed for the estimation and indemnification of injuries for which either Nation may make claim for itself or for any of its citizens. And that the second object is to assure the execution of treaties of friendship and commerce made between the two Nations and the accomplishment of the views of reciprocal advantages which suggested them."

It is certain, therefore, that the negotiation commenced in the recognition by both parties of the existence of individual claims and of the justice of making satisfaction for them, and it is equally clear that throughout the whole negotiation neither party suggested that these claims had already been either satisfied or extinguished, and it is indisputable that the treaty itself, in the second article, expressly admitted their existence and solemnly recognized the duty of providing for them at some future period.

It will be observed, sir, that the French negotiators, in their first letter, while they admit the justice of providing indemnity for individual claims, bring forward also claims arising under treaties, taking care thus early to advance the pretensions of France on account of alleged violations by the United States of the treaties of 1778. On that part of the case I shall say something hereafter, but I use this first letter of the French ministers at present only to show that, from the first, the French Government admitted its obligation to indemnify individuals who had suffered wrongs and injuries.

The honorable Member from New York [Mr. Wright] contends, sir, that at the time of concluding the treaty these claims had ceased to exist. He says that a war had taken place between the United States and France, and by the war the claims had become extinguished. I differ from the honorable Member, both as to the fact of war and as to the consequences to be deduced from it, in this case, even if public war had existed. If we admit, for argument sake, that war had existed, yet we find that on the restoration of amity both parties admit the justice of these claims and their continued existence, and the party against which they are preferred acknowledges her obligation and expresses her willingness to pay them. The mere fact of war can never extinguish any claim. If, indeed, claims for indemnity be the professed ground of a war, and peace be afterwards concluded without obtaining any acknowledgment of the right, such a peace may be construed to be a relinquishment of the right, on the ground that the question has been put to the arbitration of the sword and decided. But, if a war be waged to enforce a disputed claim, and it be carried on till the adverse party admits the claim and agrees to provide for its payment, it would be strange, indeed, to hold that the claim itself was extinguished by the very war which had compelled its express recognition. Now, whatever we call that state of things which existed between the United States and France from 1798 to 1800, it is evident that neither party contended or supposed that it had been such a state of things as had extinguished individual claims for indemnity for illegal seizures and confiscations.

The honorable Member, sir, to sustain his point, must prove that the United States went to war to vindicate these claims, that they waged that war unsuccessfully, and that they were therefore glad to make peace, without obtaining payment of the claims, or any admission of their justice. I am happy, sir, to say that, in my opinion, facts do not authorize any such record to be made up against the United States.

I think it is clear, sir, that whatever misunderstanding existed between the United States and France, it did not amount at any time to open and public war. It is certain that the amicable relations of the two countries were much disturbed; it is certain that the United States authorized armed resistance to French captures, and the captures of French vessels of war found hovering on our coast; but it is certain, also, not only that there was no declaration of war on either side, but that the United States, under all their provocations, did never authorize general reprisals on French commerce. At the very moment when the gentleman says war raged between the United States and France, French citizens came into our courts, in their own names, claimed restitution for property seized by American cruisers and obtained decrees of restitution. They claimed as citizens of France and obtained restoration in our courts as citizens of France. It must have been a singular war, sir, in which such proceedings could take place. Upon a fair view of the whole matter, Mr. President, it will be found, I think, that everything done by the United States was defensive. No part of it was ever retaliatory. The United States did not take justice into their own hands.

The strongest measure, perhaps, adopted by Congress, was the act of May 28, 1798. The honorable Member from New York has referred to this act, and chiefly relies upon it to prove the existence or the commencement of actual war. But does it prove either the one or the other?

It is not an act declaring war; it is not an act authorizing reprisals; it is not an act which in any way acknowledges the actual existence of war. Its whole implication and import is the other way. Its title is, "An act more effectually to protect the commerce and coasts of the United States."

This is its preamble:

"Whereas armed vessels, sailing under authority or pretense of authority from the Republic of France, have committed depredations on the commerce of the United States, and have recently captured the vessels and property of citizens thereof on and near the coasts, in violation of the law of nations and treaties between the United States and the French nation: Therefore"—

And then follows its only section, in these words:

"*Be it enacted, etc.*, That it shall be lawful for the President of the United States, and he is hereby authorized, to instruct and direct the commanders of the armed vessels belonging to the United States to seize, take, and bring into any port of the United States, to be proceeded against according to the laws of nations, any such armed vessel which shall have committed, or which shall be found hovering on the coasts of the United States for the purpose of committing, depredations on the vessels belonging to citizens thereof; and also retake any ship or vessel of any citizen or citizens of the United States which may have been captured by any such armed vessel."

This act, it is true, authorized the use of force, under certain circumstances and for certain objects, against French vessels. But there may be acts of authorized force, there may be assaults, there may be battles, there may be captures of ships and imprisonment of persons, and yet no general war. Cases of this kind may occur under that practice of retortion which is justified, when adopted for just cause, by the laws and usages of nations, and which all the writers distinguish from general war.

The first provision in this law is purely preventive and defensive, and the other hardly goes beyond it. Armed vessels hovering on our coast and capturing our vessels, under authority or pretence of authority from a foreign state, might be captured and brought in, and vessels already seized by them retaken. The act is limited to armed vessels.

But why was this if general war existed? Why was not the naval power of the country let loose at once, if there were war, against the commerce of the enemy? The cruisers of France were preying on our commerce. If there was war, why were we restrained from general reprisals on her commerce? This restraining of the operation of our naval marine to armed vessels of France, and to such of them only as should be found hovering on our coast for the purpose of committing depredations on our commerce, instead of providing a state of war, proves, I think, irresistibly that a state of general war did not exist. But even if this act of Congress left the matter doubtful, other acts passed at and near the same time demonstrate the understanding of Congress to have been that although the relations between the two countries were greatly disturbed, yet war did not exist.

On the same day (May 28, 1798) in which this act passed, on which the Member from New York lays so much stress, as proving the actual existence of war with France, Congress passed another act, entitled "An act authorizing the President of the United States to raise a provisional army"; and the first section declared that the President should be authorized, "in the event of a declaration of war against the United States, or of actual invasion over their territory by a foreign power, or of imminent danger of such invasion, to cause to be enlisted," etc., 10,000 men.

On the 16th of July following Congress passed the law for augmenting the Army, the second section of which authorized the President to raise 12 additional regiments of infantry and 6 troops of light dragoons, "to be enlisted for and during the continuance of the existing differences between the United States and the French Republic, unless sooner discharged," etc.

The following spring, by the act of the 2d of March, 1799, entitled "An act giving eventual authority to the President of the United States to augment the Army," Congress provided that it should be lawful for the President of the United States, in case war should break out between the United States and a foreign European power, etc., to raise 24 regiments of infantry, etc. And in the act for better organizing the Army, passed the next day, Congress repeats the declaration, contained in a former act, that certain provisions shall not take effect unless war shall break out between the United States and some European prince, potentate, or State.

On the 20th of February, 1800, an act was passed to suspend the act for augmenting the Army; and this last act declared that further enlistments should be suspended until the further order of Congress, unless in the recess of Congress, and during the continuance of the existing differences between the United States and the French Republic, war should break out between the United States and the French Republic, or imminent danger of an invasion of their territory by the said Republic should be discovered.

On the 14th of May, 1800, four months before the conclusion of the treaty, Congress passed an act authorizing the suspension of military appointments and the discharge of troops under the provisions of the previous laws. No commentary is necessary, sir, on the texts of these statutes to show that Congress never recognized the existence of war between the United States and France. They apprehended war might break out; and they made suitable provision for that exigency, should it occur; but it is quite impossible to reconcile the express and so often repeated declarations of these statutes, commencing in 1798, running through 1799, and ending in 1800, with the actual existence of war between the two countries at any period within those years.

The honorable Member's second principal source of argument, to make out the fact of a state of war, is the several nonintercourse acts. And here again it seems to me an exactly opposite inference is the true one. In 1798, 1799, and 1800 acts of Congress were passed suspending the commercial intercourse between the United States and France, each for one year. Did any government ever pass a law of temporary nonintercourse with a public enemy? Such a law would be little less than an absurdity. War itself effectually creates nonintercourse. It renders all trade with the enemy illegal, and of course subjects all vessels found so engaged, with their cargoes, to capture and condemnation as enemy's property. The first of these laws was passed June 13, 1798; the last, February 27, 1800. Will the honorable Member from New York tell us when the war commenced? When did it break out? When did those "differences" of which the acts of Congress speak assume a character of general hostility? Was there a state of war on the 13th of June, 1798, when Congress passed the first nonintercourse act; and did Congress, in a state of public war, limit nonintercourse with the enemy to one year? Or was there a state of peace in June, 1798? And, if so, I ask again, at what time after that period and before September, 1800, did the war break out? Difficulties of no small magnitude surround the gentleman, I think, whatever course he takes through these statutes, while he attempts to prove from them a state of war. The truth is they prove incontestably a state of peace; a state of endangered, disturbed, agitated peace, but still a state of peace. Finding themselves in a state of great misunderstanding and contention with France, and seeing our commerce a daily prey to the rapacity of her cruisers, the United States prefered nonintercourse to war. This is the ground of the nonintercourse acts. Apprehending, nevertheless, that war might break out, Congress made prudent provision for it by augmenting the military force of the country. This is the ground of the laws for raising a provisional Army. The entire provisions of all these laws necessarily suppose an existing state of peace; but they imply also an apprehension that war might commence. For a state of actual war they were all unsuited, and some of them would have been, in such a state, preposterous and absurd. To a state of present peace, but disturbed, interrupted, and likely to terminate in open hostilities, they were all perfectly well adapted. And as many of these acts in express terms speak of war as not actually existing, but as likely or liable to break out, it is clear, beyond all reasonable question, that Congress never at any time regarded the state of things existing between the United States and France as being a state of war.

As little did the Executive Government so regard it, as must be apparent from the instructions given to our ministers, when the mission was sent to France. Those instructions, having recurred to the numerous acts of wrong committed on the commerce of the United States, and the refusal of indemnity by the Government of France, proceed to say: "This conduct of the French Republic would well have justified an immediate declaration of war on the part of the United States; but, desirous of maintaining peace, and still willing to leave open the door of reconciliation with France, the United States contented themselves with preparations for defense and measures calculated to protect their commerce."

It is equally clear, on the other hand, that neither the French Government nor the French ministers acted on the supposition that war had existed between the two nations. And it was for this reason that they held the treaties of 1778 still binding. Within a month or two of the signature of the treaty, the ministers plenipotentiary of the French Republic write thus to Messrs. Ellsworth, Davie, and Murray: "In the first place, they will insist upon the principle already laid down in their former note, viz: That the treaties which united France and the United States are not broken; that even war could not have broken them; but that the state of misunderstanding which existed for some time between France and the United States, by the acts of some agents, rather than by the will of the respective Governments, has not been a state of war, at least on the side of France."

Finally, sir, the treaty itself, what is it? It is not called a treaty of peace; it does not provide for putting an end to hostilities. It says not one word of any preceding war; but it does say that "differences" have arisen between the two States, and that they have, therefore, respectively, appointed their plenipotentiaries and given them full powers to treat upon those differences and to terminate the same.

But the second article of the treaty, as negotiated and agreed on by the ministers of both Governments, is of itself a complete refutation of the whole argument which is urged against this bill, on the ground that the claims have been extinguished by war, since that article distinctly and expressly acknowledges the existence of the claims and contains a solemn pledge that the two Governments, not being able to agree on them at present, will negotiate further on them at a convenient time thereafter. Whether we look, then, to the decisions of the American courts, to the acts of Congress, to the instructions of the American Executive Government, to the language of our ministers, to the declarations of the French Government and the French ministers, or to the unequivocal language of the treaty itself, as originally agreed to, we meet irresistible proof of the truth of the declaration that the state of misunderstanding which had existed between the two countries was not war.

If the treaty had remained as the ministers on both sides agreed upon it, the claimants, though their indemnity was postponed, would have had no just claim on their own Government. But the treaty did not remain in this state. This second article was stricken out by the Senate; and, in order to see the obvious motives of the Senate in thus striking out the second article, allow me to read the whole article. It is in these words:

"The ministers plenipotentiaries of the two parties not being able to agree, at present, respecting the treaty of alliance of the 6th of February, 1778, the treaty of amity and commerce of the same date, and the convention of the 14th of November, 1788, nor upon the indemnities mutually due or claimed, the parties will negotiate further on these subjects at a convenient time; and until they may have agreed upon these points the said treaties and convention shall have no operation, and the relations of the two countries shall be regulated as follows."

The article thus stipulating to make the claims of France, under the old treaties, matter of further negotiation, in order to get rid of such negotiation and the whole subject the Senate struck out the entire article, and ratified the treaty in this corrected form. France ratified the treaty as thus amended, with the further declaration that by thus retrenching the second article the two nations renounced the respective pretensions which were the objects of the article. In this declaration of the French Government the Senate afterwards acquiesced, so that the Government of France by this retrenchment agreed to renounce her claims under the treaties of 1778, and the United States in like manner renounced the claims of their citizens for indemnity due to them.

And this proves, sir, the second proposition, which I stated at the commencement of my remarks, viz: That these claims were released, relinquished, or extinguished by the amendment of the treaty and its ratification as amended. It is only necessary to add on this point that these claims for capture before 1800 would have been good claims under the late treaty with France, and would have come in for a dividend in the fund provided by that treaty if they had not been released by the treaty of 1800. And they are now excluded from all participation in the benefit of the late treaty because of such release or extinguishment by that of 1800.

In the third place, sir, it is to be proved, if it be not proved already, that these claims were surrendered or released by the Government of the United States on national considerations, and for objects in which these claimants had no more interest than any other citizens.

Now, sir, I do not feel called on to make out that the claims and complaints of France against the Government of the United States were well founded. It is certain that she put forth such claims and complaints and insisted on them to the end. It is certain that by the treaty of alliance of 1778 the United States did guarantee to France her West India possessions. It is certain that by the treaty of commerce of the same date the United States stipulated that French vessels of war might bring their prizes into the ports of the United States and that the enemies of France should not enjoy that privilege, and it is certain that France contended that the United States had plainly violated this article as well by their subsequent treaty with England as by other acts of the Government. For the violation of these treaties she claimed indemnity from the Government of the United States. Without admitting the justice of these pretensions the Government of the United States found them extremely embarrassing, and they authorized our ministers in France to buy them off by money.

For the purpose of showing the justice of the present bill, it is not necessary to insist that France was right in these pretensions. Right or wrong, the United States were anxious to get rid of the embarrassments which they occasioned. They were willing to compromise the matter. The existing state of things, then, was exactly this: France admitted that citizens of the United States had just claims against her; but she insisted that she, on the other hand, had just claims against the Government of the United States.

She would not satisfy our citizens till our Government agreed to satisfy her. Finally, a treaty is ratified, by which the claims on both sides are renounced.

The only question is, whether the relinquishment of these individual claims was the price which the United States paid for the relinquishment by France of her claims against our Government? And who can doubt it? Look to the negotiations; the claims on both sides were discussed together. Look to the second article of the treaty as originally agreed to; the claims on both sides are there reserved together. And look to the Senate's amendment and the subsequent declaration of the French Government acquiesced in by the Senate, and there the claims on both sides are renounced together. What stronger proof could there be of mutuality of consideration? Sir, allow me to put this direct question to the honorable Member from New York. If the United States did not agree to renounce these claims, in consideration that France would renounce hers, what was the reason why they surrendered thus the claims of their own citizens? Did they do it without any consideration at all? Was the surrender wholly gratuitous? Did they thus

solemnly renounce claims for indemnity, so just, so long insisted on by themselves, the object of two special missions, the subjects of so much previous controversy, and at one time so near being the cause of open war—did the Government surrender and renounce them gratuitously, or for nothing? Had it no reasonable motive in the relinquishment? Sir, it is impossible to maintain any such grounds.

And, on the other hand, let me ask, was it for nothing that France relinquished what she had so long insisted on, the obligation of the United States to fulfill the treaties of 1778? For the extinguishment of this obligation we had already offered her a large sum of money, which she had declined. Was she now willing to give it up without any equivalent?

Sir, the whole history of the negotiation is full of proof that the individual claims of our citizens and the Government claims of France against the United States constituted the respective demands of the two parties. They were brought forward together, discussed together, insisted on together. The French ministers would never consent to disconnect them, while they admitted, in the fullest manner, the claims on our side, they maintained with persevering resolution the claims on the side of France. It would fatigue the Senate were I to go through the whole correspondence and show, as I could easily do, that in every stage of the negotiation these two subjects were kept together. I will only refer to some of the more prominent and decisive parts.

In the first place, the general instructions which our ministers received from our own Government when they undertook the mission directed them to insist on the claims of American citizens against France, to propose a joint board of commissioners to state those claims, and to agree to refer the claims of France for infringements of the treaty of commerce to the same board. I will read, sir, so much of the instructions as comprehend these points:

"First. At the opening of the negotiation you will inform the French ministers that the United States expect from France as an indispensable condition of the treaty a stipulation to make to the citizens of the United States full compensation for all losses and damages which they shall have sustained by reason of irregular or illegal captures or condemnations of their vessels, and other property, under color of authority or commissions from the French Republic or its agents. And all captures and condemnations are deemed irregular or illegal when contrary to the law of nations, generally received and acknowledged in Europe, and to the stipulations in the treaty of amity and commerce of the 6th of February, 1778, fairly and ingenuously interpreted while that treaty remained in force.

"Second. If these preliminaries should be satisfactorily arranged, then, for the purpose of examining and adjusting all the claims of our citizens, it will be necessary to provide for the appointment of a board of commissioners similar to that described in the sixth and seventh articles of the treaty of amity and commerce between the United States and Great Britain."

As the French Government have heretofore complained of infringements of the treaty of amity and commerce by the United States or their citizens, all claims for injuries thereby occasioned to France or its citizens are to be submitted to the same board, and whatever damages they award will be allowed by the United States and deducted from the sums awarded to be paid by France.

Now, sir, suppose this board had been constituted, and suppose that it had made awards against France in behalf of citizens of the United States, and had made awards also in favor of the Government of France against the Government of the United States; and then these last awards had been deducted from the amount of the former, and the property of citizens thus applied to discharge the public obligations of the country, would anybody doubt that such citizens would be entitled to indemnity? And are they less entitled because, instead of being first liquidated and ascertained, and then set off, one against the other, they are finally agreed to be set off against each other, and mutually relinquished in the lump?

Acting upon their instructions, it will be seen that the American ministers made an actual offer to suspend the claim for indemnities till France should be satisfied as to her political rights under the treaties. On the 15th of July they made this proposition to the French negotiators:

"Indemnities to be ascertained and secured in the manner proposed in our project of a treaty, but not to be paid until the United States shall have offered to France an article stipulating free admission, in the ports of each, for the privateers and prizes of the other, to the exclusion of their enemies."

This, it will be at once seen, was a direct offer to suspend the claims of our own citizens till our Government should be willing to renew to France the obligation of the treaty of 1778. Was not this an offer to make use of private property for public purposes?

On the 11th of August the French plenipotentiaries thus write to the ministers of the United States:

"The propositions which the French ministers have the honor to communicate to the ministers plenipotentiary of the United States are reduced to this simple alternative:

"Either the ancient treaties, with the privileges resulting from priority, and a stipulation of reciprocal indemnities;

"Or a new treaty, assuring equality without indemnity."

In other words, this offer is, "If you will acknowledge or renew the obligation of the old treaties, which secure to us privileges in your ports which our enemies are not to enjoy, then we will make indemnities for the losses of your citizens; or, if you will give up all claim for such indemnities, then we will relinquish our especial privileges under the former treaties and agree to a new treaty which shall only put us on a footing of equality with Great Britain, our enemy."

On the 20th of August our ministers proposed that the former treaties, so far as they respect the rights of privateers, shall be renewed; but that it shall be optional with the United States, by the payment within seven years of 3,000,000 francs, either in money or in securities issued by the French Government for indemnities to our citizens, to buy off this obligation or to buy off all its political obligations under both the old treaties by payment in like manner of 5,000,000 francs.

On the 4th of September the French ministers submit these propositions:

"A commission shall regulate the indemnities which either of the two Nations may owe to the citizens of the other.

"The indemnities which shall be due by France to the citizens of the United States shall be paid for by the United States, and in return for which France yields the exclusive privilege resulting from the seventeenth and twenty-second articles of the treaty of commerce, and from the rights of guaranty of the eleventh article of the treaty of alliance."

The American ministers considered these propositions as inadmissible. They, however, on their part, made an approach to them by proposing in substance that it should be left optional with the United States on the exchange of the ratification to relinquish the indemnities, and in that case the old treaties not to be obligatory on the United States, so far as they conferred exclusive privileges on France. This will be seen in the letter of the American ministers of the 5th of September.

On the 18th of September the American ministers say to those of France:

"It remains only to consider the expediency of a temporary arrangement. Should such an arrangement comport with the views of France, the following principles are offered as the basis of it:

"First. The ministers plenipotentiaries of the respective parties not being able at present to agree respecting the former treaties and indemnities, the parties will, in due and convenient time, further treat on those subjects; and, until they shall have agreed respecting the same, the said treaties shall have no operation."

This, the Senate will see, is substantially the proposition which was ultimately accepted and which formed the second article of the treaty. By that article these claims on both sides were postponed for the present, and afterwards, by other acts of the two Governments, they were mutually and forever renounced and relinquished.

And now, sir, if any gentleman can look to the treaty, look to the instructions under which it was concluded, look to the correspondence which preceded it, and look to the subsequent agreement of the two Governments to renounce claims on both sides, and not admit that the property of these private citizens has been taken to buy off embarrassing claims of France on the Government of the United States, I know not what other or further evidence could ever force that conviction on his mind.

I will conclude this part of the case by showing you how this matter was understood by the American administration, which finally accepted the treaty, with this renouncement of indemnities. The treaty was negotiated in the administration of Mr. Adams. It was amended in the Senate, as already stated, and ratified on the 3d day of February, 1801, Mr. Adams being still in office. Being thus ratified, with the amendment, it was sent back to France, and on the 31st day of July the First Consul ratified the treaty, as amended, by striking out the second article, but accompanied the ratification with this declaration:

"*Provided*, That, by this retrenchment, the two States renounce their respective pretensions, which are object of the said article."

With this declaration appended, the treaty came back to the United States. Mr. Jefferson had now become President, and Mr. Madison was Secretary of State. In consequence of the declaration of the French Government, accompanying its ratification of the treaty, and now attached to it, Mr. Jefferson again referred the treaty to the Senate, and, on the 19th of December, 1801, the Senate resolved that they considered the treaty as duly ratified. Now, sir, in order to show what Mr. Jefferson and his administration thought of this treaty and the effect of its ratification, in its then existing form, I beg leave to read an extract of an official letter from Mr. Madison to Mr. Pinckney, then our minister in Spain. Mr. Pinckney was at that time negotiating for the adjustment of our claim on Spain; and, among others, for captures committed within the territories of Spain by French subjects. Spain objected to these claims on the ground that the United States had plain redress of such injuries from France. In writing to Mr. Pinckney, under date of February 6, 1804, and commenting on this plea of Spain, Mr. Madison says:

"The plea on which it seems the Spanish Government now principally relies is the erasure of the second article from our late convention with France, by which France was released from the indemnities due for spoliations committed under her immediate responsibility to the United States. This plea did not appear in the early objections of Spain to our claims. It was an afterthought, resulting from the insufficiency of every other plea, and is certainly as little valid as any other.

"The injuries for which indemnities are claimed from Spain, though committed by Frenchmen, took place under Spanish authority; Spain, therefore, is answerable for them. To her we have looked, and continue to look, for redress. If the injuries done to us by her resulted in any manner from injuries done to her by France, she may, if she pleases, resort to France as we resort to her. But whether her resort to France would be just or unjust is a question between her and France, not between either her and us or us and France. We claim against her, not against France. In releasing France, therefore, we have not released her. The claims, again, from which France was released, were admitted by France, and the release was for a valuable consideration, in a correspondent release of the United States from certain claims on them. The claims we made on Spain were never admitted by France, nor made on France by the United States; they made, therefore, no part of the bargain with her, and could not be included in the release."

Certainly, sir, words could not have been used which should more clearly affirm that these individual claims, these private rights of property, had been applied to public uses. Mr. Madison here declares unequivocally that these claims have been admitted by France; that they were relinquished by the Government of the United States; that they were relinquished for a valuable consideration; that that consideration was a correspondent release of the United States from certain claims on them; and that the whole transaction was a bargain between the two Governments. This, sir, be it remembered, was little more than two years after the final promulgation of the treaty; it was by the Secretary of State under that administration which gave effect to the treaty in its amended form, and it proves beyond mistake and beyond doubt the clear judgment which that administration had formed upon the true nature and character of the whole transaction.

I have said nothing, sir, of the Louisiana treaty because neither that treaty nor anything done under it affects this question in the slightest degree. Great mistakes I am aware have existed on this point. The honorable Member from New York [Mr. Wright] candidly acknowledged that he himself had partaken in this misapprehension; but as he and others who have opposed the bill admit that the Louisiana treaty is not connected with this subject at all, I will not detain the Senate with remarks upon it. Suffice it to say that the demands provided for by that treaty were only certain debts arising in contract or due for detention of vessels by embargo, and for certain vessels not condemned at the date of the treaty of 1800, and that none of them arose from illegal captures and condemnations. And the Senate will see that, to avoid all ambiguity on that point, this bill expressly excludes from its provisions all claims which were paid in whole or in part under that treaty.

It only remains to show the reasonableness of the amount which the bill proposes to distribute. And this, it must be admitted, can only be

fixed by estimate, and this estimate may be formed in various ways. So far as can be learned from official reports, there are something more than 600 vessels with their cargoes which will be supposed to form claims under this bill. Some of them it is probable may not be good claims, but a very great majority of that number will be no doubt just and fair cases.

Then the question is what may be regarded as a just average value of each vessel and cargo? And this question is answered in a manner as satisfactory as the nature of the case allows—by ascertaining the average value of vessels and cargoes for which compensation has been awarded under the treaty with Spain. That average was $16,800 for each vessel and cargo; and taking the cases coming under this bill to be of the same average value, the whole amount of loss would exceed $10,000,000, without interest.

On this estimate it seems not unreasonable to allow the sum of $5,000,000 in full satisfaction for all claims. There is no ground to suppose that the claimants will receive out of this sum a greater rate of indemnity than claimants have received who had claims against Spain or than other claimants against France, whose claims have not been relinquished because arising since 1800, will receive under the provisions of the late French treaty.

Mr. President, I have performed the duty of explaining this case to the Senate as I understand it. I believe the claims to be as just as were ever presented to any government. I think they constitute an honest and well-founded debt, due by the United States to these claimants; a debt which, I am persuaded, the justice of the Government and the justice of the country will, one day, both acknowledge and honorably discharge.

Mr. HEYBURN. Mr. President, I should like to have the question restated.

The PRESIDING OFFICER. The Senator from Kansas moves to strike out beginning with page 47, line 19, all of the bill down to and including line 26 on page 118.

Mr. BRISTOW. I ask for the yeas and nays on agreeing to my amendment.

The yeas and nays were ordered, and the Secretary proceeded to call the roll.

Mr. CLARK of Wyoming (when his name was called). I have a general pair with the Senator from Missouri [Mr. STONE], who is absent. Therefore I withhold my vote.

Mr. DILLINGHAM (when his name was called). Owing to the absence from the Chamber, caused by sickness, of the senior Senator from South Carolina [Mr. TILLMAN], with whom I have a general pair, I withhold my vote. Otherwise I would vote "nay."

Mr. FLINT (when his name was called). I have a general pair with the senior Senator from Texas [Mr. CULBERSON]. As he is not present, I withhold my vote.

Mr. PERKINS (when his name was called). I have a general pair with the junior Senator from North Carolina [Mr. OVERMAN], and therefore withhold my vote.

Mr. SHIVELY (when his name was called). On this vote I am paired with the junior Senator from Maryland [Mr. SMITH]. If he were present he would vote "nay," and I would vote "yea."

Mr. WARREN (when his name was called). I have a standing pair with the senior Senator from Mississippi [Mr. MONEY]. I will transfer my pair so that the Senator from Mississippi [Mr. MONEY] will stand paired with the Senator from Delaware [Mr. RICHARDSON]. I vote "nay."

The roll call was concluded.

Mr. DILLINGHAM. I will transfer my general pair with the senior Senator from South Carolina [Mr. TILLMAN] to the Senator from Rhode Island [Mr. ALDRICH]. I vote "nay."

Mr. CLARKE of Arkansas. I inquire whether the senior Senator from Maryland [Mr. RAYNER] has voted.

The PRESIDING OFFICER. He has not voted.

Mr. CLARKE of Arkansas. I am paired with that Senator on this vote. I would vote "yea" if I were at liberty to vote.

Mr. SCOTT (after having voted in the negative). Has the senior Senator from Florida [Mr. TALIAFERRO] voted?

The PRESIDING OFFICER. He has not voted.

Mr. SCOTT. Then I will ask leave to withdraw my vote.

Mr. JOHNSTON. I desire to announce the pair of the senior Senator from Kentucky [Mr. PAYNTER] with the senior Senator from Colorado [Mr. GUGGENHEIM].

Mr. SCOTT. I will transfer my pair with the senior Senator from Florida [Mr. TALIAFERRO] to the junior Senator from Rhode Island [Mr. WETMORE] and vote. I vote "nay."

The Secretary recapitulated the vote.

Mr. BRISTOW. I should like to inquire if the vote has been completed.

The PRESIDING OFFICER. The vote has not been announced as yet. It has been completed.

Mr. BRISTOW. I should like to inquire the object of the delay.

The PRESIDING OFFICER. The Chair will state the object of the delay in announcing the vote on the amendment offered by the Senator from Kansas. Those voting in the affirmative are 27 and those voting in the negative are 27. The Vice President has been sent for and will decide.

The result as announced was—yeas 27, nays 27, as follows:

YEAS—27.

Bacon	Brown	Fletcher	Purcell.
Beveridge	Burkett	Frazier	Simmons
Borah	Burton	Heyburn	Smith, Mich.
Bourne	Chamberlain	Jones	Sutherland
Bradley	Clapp	La Follette	Swanson
Brandegee	Cummins	Nelson	Terrell
Bristow	Dixon	Percy	

NAYS—27.

Burnham	du Pont	Lodge	Penrose
Crane	Foster	Lorimer	Root
Crawford	Frye	McCumber	Scott
Cullom	Gallinger	Martin	Stephenson
Depew	Gamble	Newlands	Thornton
Dick	Hale	Oliver	Warren
Dillingham	Kean	Page	

NOT VOTING—38.

Aldrich	Curtis	Overman	Smoot
Bailey	Davis	Owen	Stone
Bankhead	Elkins	Paynter	Taliaferro
Briggs	Flint.	Perkins	Taylor
Bulkeley	Gore	Piles	Tillman
Burrows	Guggenheim	Rayner	Warner
Carter	Hughes	Richardson	Wetmore
Clark, Wyo.	Johnston	Shively	Young
Clarke, Ark.	Money	Smith, Md.	
Culberson	Nixon	Smith, S. C.	

So Mr. BRISTOW's amendment was rejected.

Mr. BACON. Mr. President, I rise to a point of order.

The PRESIDING OFFICER. The Senator from Georgia will state his point of order.

Mr. BACON. I understood the announcement from the Chair to be that there was a tie vote and that the Vice President had been sent for. That should not be done. It is the duty of the Chair to announce the vote. Although the announcement of the vote would carry in the opposite direction from that in which I myself have voted, I make this statement in the interest of orderly and proper procedure.

The PRESIDING OFFICER. The Chair announced the vote.

Mr. BACON. I beg the Chair's pardon. I understood the Chair to say that the Vice President had been sent for.

The PRESIDING OFFICER. The Chair will state for the information of the Senator from Georgia that, not being a trained parliamentarian, he thought it was necessary to send for the Vice President, but he was informed to the contrary. The Chair announced the vote, and the amendment is lost.

Mr. GALLINGER and others. Let us have a vote on the bill.

The PRESIDING OFFICER. If there are no other amendments to be offered as in Committee of the Whole, the bill will be reported to the Senate.

Mr. BURTON. I understand that further amendments are to be offered. I have an amendment to offer, which I send to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The SECRETARY. On page 127, in line 13, after the word "dollars," insert the following proviso:

Provided, That not to exceed 40 per cent of this amount shall be paid as compensation for services in the prosecution of this claim.

Mr. BURTON. The senior Senator from North Dakota [Mr. MCCUMBER] desired to be present when this amendment was considered. I should like to ask whether he is here or not.

Mr. MARTIN. I knew the Senator from North Dakota was interested in the amendment, and I have asked one of the pages to try and find him. I would be glad if the Senator from Ohio would let the amendment be passed over for the present until the Senator from North Dakota is in the Chamber.

Mr. BURTON. I have no objection; but I want to have it brought up before the bill is disposed of.

Mr. BRISTOW. I move to strike out all of the items in the bill relating to the allowance of claims for French spoliation where no reports have been made by the committee to the Senate. There are a number of ships where appropriations are made for losses, namely, the schooner *Hetty*, page 48; *Centurian*, page 79; *Diana*, page 81; *Hazard*, page 88; *Hope*, page 90; *Julia*, page 93; *Rebecca*, page 98; *Sophia*, page 101; schooner *Betsey*, page 106, and all on pages 107 to 118. I have searched with great care this volume here and I find no report at all in regard to those ships. I have been unable to find anything whatever in regard to them.

Mr. BEVERIDGE. Will the Senator indicate the lines in the bill which include those ships? I rather think his motion would have to be to strike out the items.

The PRESIDING OFFICER. The Chair suggests that the Senator send his amendment to the desk that it may be read.

Mr. BRISTOW. I will dictate it, so that the clerks may take it down. It is to strike out, on page 48, lines 13, 14, 15, and 16—all relating to appropriations to reimburse the losers of the vessel *Hetty*.

Mr. BURNHAM. I will say in regard to that item, and the same will apply to other items, that the report on the schooner *Hetty* will be found in Senate Document No. 17, Fifty-seventh Congress, second session. If the Senator desires, I will give him the number of the Senate document and the Congress and the session as to each one of these claims.

Mr. BRISTOW. May I inquire if all the items I have read have been reported on in separate reports and are scattered about in the files somewhere?

Mr. BURNHAM. I can not say about that. My secretary informs me that they are all Senate documents, which are to be found in the document room.

Mr. BRISTOW. Let me inquire as to the appropriation for the *Centurian*, on page 79.

Mr. BURNHAM. That is House Document No. 798, Sixtieth Congress, first session. Every one of these claims has had a report from the Court of Claims. There is not a claim here that is not established upon the findings of that court.

Mr. BRISTOW. Will the Senator please state to the Senate where the reports can be found on the schooner *Sally*, on page 107 of the bill, and the brig *Drake*, on the same page?

Mr. BURNHAM. That is Senate Document No. 58, Sixty-first Congress, first session.

Mr. BRISTOW. I suppose, then, those are documents that are to be found elsewhere, rather than in this compilation?

Mr. BURNHAM. I think so.

Mr. BRISTOW. That demonstrates the very great inconvenience, at least, of getting at the facts in regard to much of this bill.

Mr. BURNHAM. I think perhaps the Senator has seen the Fulton report.

Mr. BEVERIDGE. May I ask the Senator from Kansas or the chairman of the committee a question? In considering this bill did the committee consider the reports now under discussion?

Mr. BURNHAM. They were all considered; they were before the committee at the time and investigated.

Mr. BEVERIDGE. I take it that they were not, because the Senator from Kansas [Mr. BRISTOW], who is a member of the committee, seems to be under the impression that no such reports existed.

Mr. BURNHAM. The secretary of the committee examined those reports.

Mr. BEVERIDGE. I am not talking about the secretary. My question was whether, in determining this matter, the committee had before them and considered the reports either of the Senate or of the House upon these various items. I am not talking about what the secretary says, but what is the fact about that.

Mr. BRISTOW. My understanding was that no reports had been made. I understood from the discussion in committee—I may have been in error, but certainly that was my understanding—that there were a number of these vessels upon which reports had not been made, but that, in the judgment of the subcommittee who prepared the bill, they were all right. I never knew there were any such reports, and so I have not examined them and have not had the opportunity, because my understanding was that there were none in existence.

Mr. BEVERIDGE. They were not, then, considered before the full committee?

Mr. BRISTOW. Oh, certainly not.

Mr. BEVERIDGE. How old are these particular claims?

Mr. BRISTOW. One hundred and ten years old.

Mr. BEVERIDGE. They are 110 years old, and have been reported upon, so far as these specific items are concerned, without the full committee examining the reports that existed upon them. Is that the state of the case?

Mr. LODGE. Mr. President——

The PRESIDING OFFICER. Does the Senator from Kansas yield to the Senator from Massachusetts?

Mr. BRISTOW. I do.

Mr. LODGE. Take merely as a sample the last case the Senator is asking about, and he will find that in the Sixty-first Congress, first session, in Document No. 57 of the Senate, the case of the schooner *Sally* was referred on May 25, 1909, to the Committee on Claims and ordered to be printed. That document was before the committee, and has been before the committee all the time, like every other paper referred to it. If each Member did not look at it, that was his fault.

Mr. BURNHAM. Mr. President——

The PRESIDING OFFICER. Does the Senator from Kansas yield to the Senator from New Hampshire?

Mr. BRISTOW. I do.

Mr. BURNHAM. These are the volumes [exhibiting] that contain all of these reports; they are accessible to every member of the committee, and were examined by the subcommittee, as I recall.

Mr. BRISTOW. Mr. President, while I may have been negligent in my duties, I feel that possibly I have given as much time to this subject as any other member of the committee, with the exception of the chairman, and I desire to state to the Senate that I did not know that such reports were in existence. I never heard them referred to, and my understanding was that this document contained all the reports that were available. So I have devoted my attention to this volume. If they are in other volumes scattered in other parts of the archives of Congress, I have not had an opportunity to hunt them up and examine them, and possibly would not have had the time to do so.

Mr. BURNHAM. Let me ask the Senator if he does not hold in his hand the report of Senator Fulton?

Mr. BRISTOW. I hold in my hand the only report that is available upon this bill, as I understand.

Mr. BURNHAM. That is the report of Senator Fulton in the last Congress?

Mr. BRISTOW. I will examine it in a minute. It seems to me to be a report of the Senate Committee on Claims, Sixtieth Congress, first and second sessions.

Mr. BURNHAM. That is the report of the committee—the Fulton report. That would not contain any claims considered since that report and for some time perhaps previous to the presentation of that report.

Mr. BRISTOW. Then there has been no report prepared by the committee since this one?

Mr. BURNHAM. Certainly. I want to say that here, right before me, are the volumes which contain the findings of the court, that were accessible to anybody and everybody in the document room and in the rooms of the committee, and the Senator from Kansas was expressly invited to visit the rooms and ascertain all we could show him with reference to these claims.

Mr. BRISTOW. I will submit to Senators present if it is a practical thing for a Senator of the United States, with the duties that are incumbent upon him, to hunt up in a series of volumes like those the reports on an omnibus bill, when this volume [indicating] is presented to him by the committee as containing the reports that are available? This is a practical question. I am now advised that these reports are to be found in other volumes that are kept in places that are available, if Senators knew that they were there.

Mr. GALLINGER. Mr. President, will the Senator permit an interruption?

The PRESIDING OFFICER. Does the Senator from Kansas yield to the Senator from New Hampshire?

Mr. BRISTOW. I do.

Mr. GALLINGER. Mr. President, my colleague [Mr. BURNHAM], who is always frank and who is very industrious in the discharge of his duties, vouches that of his personal knowledge a favorable report has been made on every item in this bill; that the court has acted upon them and recommended their payment. I think the Senator from Kansas ought to accept that, and I think the Senator will do so upon reflection.

Mr. BRISTOW. Mr. President, I, of course, accept the statement of the Senator from New Hampshire, the chairman of the committee [Mr. BURNHAM]. He is always courteous; he is very industrious; and he is, indeed, a very delightful gentleman, with whom to associate in the consideration of any public business; but I think I have presented to the Senate some facts in regard to reports that are here available which have convinced, indeed, a large number of Senators that this bill ought not to pass and that these claims ought not to be recognized. If I had been able to secure the reports in regard to other items or vessels that were not embraced in this document, of whose existence I had no knowledge, it seems to me that I might have been able to present other facts gleaned from those reports that would have impressed the Senate with the fact that the claims should not pass. So it seems to me that those reports should have been presented at least in a convenient form for examination, and I think the chairman of the committee will certainly concede that they have not been presented to the Senate, or even to the committee, in convenient form for examination.

Mr. BEVERIDGE. Mr. President——

The PRESIDING OFFICER. Does the Senator from Kansas yield to the Senator from Indiana?

Mr. BRISTOW. I do.

Mr. BEVERIDGE. Doubtless the answer to the question which I am about to ask has been made in the course of the Senator's remarks; but, if so, I was not present. The Senator from Kansas has stated that these claims are 110 years old. What is the reason that in that more than a century they have

not been paid? Can the Senator from Kansas state that in a sentence?

Mr. BRISTOW. I have undertaken to do that in two days here.

Mr. BEVERIDGE. I know the Senator has; but I was necessarily absent.

Mr. BRISTOW. But I will try to express it in a sentence. For 46 years the American Congress refused to recognize them as just and valid claims.

Mr. BEVERIDGE. That is the first 46 years?

Mr. BRISTOW. The first 46 years after Congress rejected them.

Mr. GALLINGER. But they were reported favorably forty-six times.

Mr. BEVERIDGE. That would be, then, the time nearest the origin of the claims.

Mr. BRISTOW. I desire to add further that in 1818 the then chairman of the Committee on Claims of this body reported adversely to these claims, and the Senate in March of that year, without division, sustained the report of the Committee on Claims, and, so far as the record shows, it unanimously decided that they were not justified. The Members who then sat in this body were all familiar with the facts out of which those claims grew, and it remains for 110 years to pass before this body will take favorable action, and, so far as I have been able to learn, when the bill passed the American Congress 46 years or more after these claims had originated there was not then a Member of the body who was familiar, from a personal point of view, with the facts that led to the origin of the claims. Up to that time, with all of the effort that had been made, there was never a time when the American Congress decided that these claims ought to be paid, but it declared specifically and definitely that they ought not to be.

Mr. BEVERIDGE. Congress acted favorably on them, and I suppose the reason the bill did not become a law was because it was vetoed by the President. Is that correct?

Mr. BRISTOW. A bill for their payment never passed the Congress until 1846, and then it was vetoed by President Polk.

Mr. BEVERIDGE. So that the summary of the history of this thing—I am asking merely for information—is that these are claims 110 years old, which a few years after their origin were unanimously rejected by this body, and not favorably considered by Congress until 46 years afterwards, when their favorable consideration in the form of the passage of a bill was vetoed by the President?

Mr. BRISTOW. That is correct.

Mr. GALLINGER. I will say to the Senator from Indiana that the Senate did not concur in that veto.

Mr. LODGE. Mr. President, if the Senator from Indiana will allow me, he is, of course, aware that when a portion of these claims passed in 1891 they were approved by President Harrison, and that similar bills have passed and been approved. President McKinley approved two and President Roosevelt approved one. There have been four payments of claims of this character.

Mr. BEVERIDGE. The question that immediately suggests itself to my mind is, Why at the same time were not all the others paid which seem to be still unacted upon?

Mr. LODGE. Because they had not yet been adjudicated. They are all precisely the same. They have been paid as they have been adjudicated.

Mr. BEVERIDGE. Are there more of these claims, then?

Mr. KEAN. There are some more.

Mr. BEVERIDGE. That opens up another question. On this bill there is provision for upward of a million dollars of these claims 110 years old.

Mr. KEAN. Eight hundred thousand dollars.

Mr. BEVERIDGE. Eight hundred thousand dollars approaches a million.

Mr. GALLINGER. But does not exceed it.

Mr. BEVERIDGE. I am assured by the Senator from New Jersey [Mr. KEAN] that this is not all. This is not the end. How much more remains?

Mr. GALLINGER. Now, Mr. President, why does not the Senator ask the same question about the claims that are in this bill growing out of our Civil War?

Mr. BEVERIDGE. Because we are not talking about them. This is the subject under discussion.

Mr. GALLINGER. Civil War claims are in this bill, and yet they are not all included.

Mr. BEVERIDGE. That is not the subject under discussion at the present moment. I might ask any question concerning anything in the bill.

Mr. GALLINGER. I think the Senator ought to be fair in dealing with the bill. The southern claims are half a century old.

Mr. BEVERIDGE. That is not the subject under discussion on the motion of the Senator from Kansas.

Mr. GALLINGER. If the Senator wishes to confine his argument to that particular point, very well.

Mr. BEVERIDGE. I am not making any argument; I am searching for information.

The PRESIDING OFFICER. The Senator from Kansas [Mr. BRISTOW] still has the floor.

Mr. BEVERIDGE. With the Senator's permission, I wish to pursue this matter one moment further. I desire to ask the Senator from New Jersey [Mr. KEAN], who kindly volunteered the information that this $800,000 of claims 110 years old is not all there are, but that there are more to follow, how much more to follow are there? Perhaps the chairman of the committee can answer.

Mr. KEAN. The chairman of the committee, the Senator from New Hampshire [Mr. BURNHAM], made a statement yesterday on that point.

Mr. BURNHAM. I stated yesterday——

Mr. BEVERIDGE. If it would not be too much trouble, I should like to have the Senator state it again.

Mr. BURNHAM. I have not the memorandum with me at this moment, but my recollection is that——

Mr. BRISTOW. If the Senator will permit me, I should like to add to the statement made by the Senator from Massachusetts [Mr. LODGE] with regard to when the first one of these claims was passed and paid. He stated that a bill carrying them was signed by President Harrison. I want to say that that bill was passed late in the day on the 3d day of March. It was a general deficiency bill, I believe, containing a large number of items, one of which was an appropriation of $1,300,000 for French spoliation claims. The President would have been required to have vetoed the entire bill a few hours before his term of office expired or sign the bill and let this item go through.

Mr. BEVERIDGE. So that President Harrison did not specifically pass upon this matter, but President Polk did. Is that correct?

Mr. BRISTOW. Certainly. I want to submit to the Senate if it is a fair and conclusive argument in favor of this bill to say that President Harrison under those circumstances recognized the justice of these claims? It is in line with the arguments that have been made for more than a hundred years in behalf of this appropriation; and the American Congress ought to repudiate it because of that fact, if for no other reason.

Mr. BURNHAM and Mr. BEVERIDGE addressed the Chair.

The PRESIDING OFFICER. The Chair understands that the Senator from New Hampshire wishes to answer the inquiry of the Senator from Indiana.

Mr. BEVERIDGE. The Senator was about to state, and I wanted him to have the opportunity to state, the aggregate amount of the additional claims still to arise that are not included in this $800,000.

Mr. BURNHAM. Mr. President, in addition to the claims that have been certified by the Court of Claims to Congress—it is merely an estimate, for no one can tell the number of claims that would be allowed or their amount—the best information I could get was that there might be perhaps $500,000 more.

Mr. BEVERIDGE. Is that the minimum or maximum estimate?

Mr. BURNHAM. That is the best estimate that could be made.

Mr. BEVERIDGE. There may be more than that, I understand the Senator to say.

Mr. BURNHAM. There may be more and there may be less.

Mr. BEVERIDGE. So that we are sure of $500,000 more in addition to this $800,000, and possibly more than that, for which of course the passage of this bill would be a precedent which Congress would not disregard, of claims 110 years old, refused 18 years after they arose, and vetoed by the President when he had them exclusively under consideration. Is that a statement of the case?

Mr. BURNHAM. Let me say in reply that these cases are taken before the court, and, as I have heretofore stated, perhaps only about 15 per cent are allowed. It is upon the findings of the court that we determine them.

Mr. BRISTOW. I think I should state to the Senator from Indiana, for his information, that here [exhibiting] is a volume of arguments in favor of paying claims, with special reference to insurance companies, none of which have yet been paid. Un-

derwriters, individuals, and partnerships are being paid now and a number of them have not yet been paid, but are still pending and being pressed. However, none of the claims held by insurance companies have been paid. Volumes of this kind [exhibiting] are presented to the Congress occasionally, this one being presented this year as an argument why Congress should go a step further than it has ever yet gone and pay the insurance companies for their losses. So if Congress gives favorable consideration to these claims, it will be paying others for another century.

Mr. BEVERIDGE. May I ask the Senator upon what ground President Polk vetoed the bill?

Mr. BRISTOW. Because it was not justified, the claims never having been recognized by France and the United States Government never having assumed the responsibility for the payment of any of them. President Pierce nine years later vetoed another bill, holding the same view in a very elaborate veto message, covering 15 pages in the printed volume; and President Cleveland also vetoed a similar bill, sending to Congress a veto message which I read yesterday and this morning.

Mr. GALLINGER. Mr. President——

The PRESIDING OFFICER. Does the Senator from Kansas yield to the Senator from New Hampshire?

Mr. BRISTOW. Certainly.

Mr. GALLINGER. The Senator says that these claims were never admitted by France. Mr. Madison, who was Secretary of State in 1804, in his instructions to Mr. Charles Pinckney, our minister to the Court of Spain, said:

> The claims from which France was released were admitted by France, and the release was for a valuable consideration in a correspondent release of the United States from certain claims on them.

Mr. BRISTOW. That does not refer to the claims included in this bill. It refers to claims paid later under a treaty in 1831.

Mr. GALLINGER. It certainly refers to the French spoliation claims. There is no doubt about that.

Mr. BRISTOW. It does not refer to the claims included in this bill.

Mr. GALLINGER. These are some of them.

Mr. BRISTOW. Those claims were covered by a subsequent treaty in 1831 and paid.

The PRESIDING OFFICER. Does the Senator from Kansas insist on his later amendment?

Mr. BRISTOW. I do not think I will, because it is fair to presume that these upon which reports have not been included in this volume are of the same character as those we have just passed upon. I withdraw that motion, with the permission of the Senate, and move to recommit the bill with instructions to eliminate from it all claims for insurance and for premiums; and on that motion I ask a roll call.

Mr. BURNHAM. Mr. President, I desire in my own time, as these matters have been coming up in a way which perhaps is not a fair presentation of the position of the committee, to make some statements for the committee.

In the first place, I want to say that no geographical considerations were taken into account in the framing of this bill. The method of the committee was to appoint a subcommittee which considered these findings of the Court of Claims; and under certain rules established by the full committee, without regard to locality, without regard to the interests of any individual, those findings were embodied in the bill, just as similar bills have been prepared before. There was no attempt to distribute favors over different parts of the country for the purpose of engaging support for this bill—nothing of the sort.

Considerable has been said in regard to the injustice or the unfairness of providing for the payment of the value of the cargo and also of the premium paid for insurance. I desire to say that into the element of damages, in matters before the courts involving the loss of a vessel at sea, enters not only the value of the cargo, but in addition to that the premium. The fact is that if the voyage of the vessel is not interrupted the premium goes into the cost of the merchandise, and the cost is recovered at the time of the sale, of the disposition of the property. If the voyage is interrupted and property is destroyed, what has the owner of the cargo lost? He has lost his cargo, and he has paid out, for nothing that comes back to him, the premium.

That I may not be mistaken in this I want to cite the opinion of Chief Justice Marshall in a case before the Supreme Court. The case is that of the *Anna Maria*, and is found in Wheaton's Reports, volume 2, page 335. This opinion was delivered in 1817. Chief Justice Marshall says this:

> The sentence of the circuit court must be reversed and the cause remanded to the circuit, with directions to reverse the sentence of the district court and to direct commissioners to ascertain the amount of damages sustained by the libellants, in doing which the value of the vessel and the prime cost of the cargo, with all charges and the premium of insurance, where it has been paid, with interest, are to be allowed.

So that by the express finding of Chief Justice Marshall the matter of the premium on insurance is an item of damage and an item to be allowed.

I do not think there can be any question as to the justice of these claims against France. The Emperor Napoleon—and I am citing from the report of the Senator from Wyoming [Mr. WARREN], made in 1902—at St. Helena, in dictating for his memoirs the events of his reign, said:

> The suppression of this article—the second article of the convention of 1800—at once put an end to the privileges which France had possessed by the treaty of 1778 and annulled the just claims which America might have made for injuries done in time of peace.

That was the statement of Napoleon to Gen. Gourgaud, who was then at St. Helena preparing his memoirs. It would seem that Napoleon must have been informed as to whether or not these claims of ours were just claims against France, and whether or not the injuries were done in time of peace.

Then there is the following extract from Wharton's International Law, volume 2, page 726:

> Mr. Pickering, Secretary of State under the first two Presidents, and who, above all others, was familiar with the situation and with the rights of the parties, said that we bartered the "just claims of our merchants" to obtain a relinquishment of the French demand, and that—
>
> "It would seem that the merchants have an equitable claim for indemnity from the United States. * * * The relinquishment by our Government having been made in consideration that the French Government relinquished its demands for a renewal of the old treaties, then it seems clear that, as our Government applied the merchants' property to buy off those old treaties, the sums so applied should be reimbursed."

Then—

> It was the opinion of one of the ablest jurists and best patriots which the country ever produced (Chief Justice Marshall) that these claims are just. "If," said he, "the envoys (of which he was one) renounced them, or did not by an article in the treaty save them, the United States would thereby become liable for them to her citizens."
>
> * * * * * * *
>
> Mr. Madison, who was Secretary of State at the time of the ratification, subsequently wrote Minister Pinckney that the claims "from which France was released were admitted by France, and the release was for a valuable consideration in a correspondent release to the United States from certain claims on them."
>
> Mr. Livingston, our minister to Paris, wrote the French minister of exterior relations, on March 25, 1802—

I wish Senators would bear in mind that this is a letter from Livingston, our minister to France, to the French foreign minister, in which he says:

> You will recollect, sir, that the second article owed its birth to claims founded upon provisions contained in treaties previously existing between the two nations; that the Government of France was willing to admit these claims, provided the connections created by these were reestablished.

He recites that the Government of France was willing to admit these claims, provided the connections created by them were reestablished; and other authorities are to the same effect.

I have, then, the opinions with reference to these claims of Napoleon, the First Consul and Emperor; of Pickering; of Madison; and of Livingston.

Now, the Court of Claims, as has been stated, was authorized by the Congress, January 20, 1885, to determine the validity and amount of these claims. When these claims first came to the court there was a hearing of considerable length. Some three weeks were occupied in the hearing. The claims were contended against for the Government by the Assistant Attorney General, and, of course, were supported by the claimants; and then, shortly after 1885, perhaps in 1886, by a unanimous decision of all of the judges of the Court of Claims, it was determined that these were valid claims and due from the United States. The form of the reports which the Court of Claims makes to the Congress is this:

> The court decides as conclusions of law that said seizure and condemnation were illegal, and the owners and insurers had valid claims of indemnity therefor upon the French Government prior to the ratification of the convention between the United States and the French Republic, concluded September 30, 1800; that said claim was relinquished to France by the Government of the United States by said treaty in part consideration of the relinquishment of certain national claims of France against the United States, and that the claimant is entitled to the following sum from the United States.

Let me say that every claim relating to French spoliations that is in this bill has been passed upon by the court, and I believe a unanimous finding in every case—no minority finding—has been delivered by the court. These findings are the foundation for the items in this bill.

Mr. CLARKE of Arkansas. May I ask the Senator——

The PRESIDING OFFICER. Does the Senator from New Hampshire yield to the Senator from Arkansas?

Mr. BURNHAM. Yes.

Mr. CLARKE of Arkansas. May I ask the Senator from New Hampshire to give us the benefit of his opinion, at the point he has now reached in his remarks, as to the meaning of this provision in the act of January 20, 1885, by which these claims were referred to the Court of Claims—

Nothing in this act shall be construed as committing the United States to the payment of any such claims.

The Court of Claims had before it no question, and no power was conferred upon the court otherwise, that would justify any finding of liability against the United States Government. If the Senator knows any other statute of the United States that purported even to fix that liability, I would be very glad if he would call our attention to it.

Mr. BRADLEY. Mr. President——

The PRESIDING OFFICER. Does the Senator from New Hampshire yield to the Senator from Kentucky?

Mr. BURNHAM. Yes.

Mr. BRADLEY. I should like to ask the Senator from Arkansas a question.

Mr. CLARKE of Arkansas. Certainly.

Mr. BRADLEY. Is the Government bound to pay any of these claims of any character that were reported on by the Court of Claims?

Mr. CLARKE of Arkansas. I understood the argument being made by the chairman of the committee to be to the effect that there has been a judgment of the court which fixes the liability of the United States to pay them.

Mr. BRADLEY. As I understand—and I want to be put right on it—the Civil War claims were referred to the Court of Claims, but the Government does not therefore make itself liable for them.

Mr. CLARKE of Arkansas. I do not see the pertinency of the Senator's suggestion, or that the Civil War claims have anything to do with this. They are just like these claims. They ought to stand on their own merits. If they are not proper, they ought to be rejected; they ought not to be allowed merely because somebody else has a claim he wants to have paid.

Mr. BURNHAM. If the Senator will allow me, I should like to answer the Senator's inquiry. Congress submitted the claims to this court for a finding upon the questions of validity and amount. It does not appear, and it is not so understood, that the court had the right to pass judgment which should be executed against the Government of the United States. The findings by this court, with its opinion as to the validity and amount of these claims, come back to Congress, and an appropriation by Congress is necessary. This is all that is claimed for these findings.

Mr. HALE. And Congress has repeatedly appropriated.

Mr. BURNHAM. Congress has repeatedly appropriated. I desire to come to that a little later.

I want to say that it has been said here over and over again that these claims were provided for in the treaty of 1803, or 1819, or in the treaty of 1831. I wish to read from the act of January 20, 1885, referring these claims to the Court of Claims:

That the provisions of this act shall not extend to such claims as were embraced in the convention between the United States and the French Republic concluded on the 30th day of April, 1803; nor to such claims growing out of the acts of France as were allowed and paid, in whole or in part, under the provisions of the treaty between the United States and Spain concluded on the 22d day of February, 1819; nor to such claims as were allowed, in whole or in part, under the provisions of the treaty between the United States and France concluded on the 4th day of July, 1831.

The report of the Senator from Wyoming continues:

Of course, claims coming under the two treaties of 1819 with Spain and of 1831 with France were properly excluded from consideration in connection with the present claims.

The sum and substance of it is that by the act of January 20, 1885, all claims were barred out from consideration except these present spoliation claims.

Here it appears that in 1803 the treaty did not embrace any of these claims that are before the Senate to-day. The treaty of 1803 embraced only the claims that did not grow out of spoliations, but arose on other grounds entirely; and that will appear from an examination of the treaty itself.

The report continues:

In this treaty, under which we acquired Louisiana for $20,000,000, it was provided that $5,000,000 thereof should be paid by the United States to American citizens on account of debts due to them by the French Government. It in terms distinguishes between these debts growing out of purchases of supplies and the class of claims for spoliations which were released to France under the treaty of September 30, 1800, and in article 4 uses the following language, to wit:

"It is expressly agreed that the preceding articles shall comprehend no debts but such as are due to citizens of the United States who have been and are yet creditors of France."

So it is a statement of the exact truth when it is said that not one of the spoliation claims in this bill was included in the treaty of 1803.

The next, the treaty of 1819, was with Spain. We made a treaty with Spain, and from Spain collected and distributed among claimants for spoliations of vessels and cargoes condemned in Spanish ports $5,000,000. Spain paid to us the money instead of releasing us from an obligation.

Again, under the treaty of 1831, France paid the United States $5,000,000 for spoliations committed after the treaty of September 30, 1800, chiefly under Napoleon's Milan and Berlin decrees; the money was distributed by a United States commission among the claimants, and 51 insurance-company claims were awarded $2,915,791.82, as fully appears in Senate Executive Document No. 74, Forty-ninth Congress, first session.

It is singular if a state of war existed so that we had no just claim against France, that in all the condemnations of American vessels there is never a statement that they were condemned as the enemy's property, but condemnation is invariably stated to be on account of alleged violations of neutrality.

Considerable stress has been given to the message of President Polk, and with the leave of the Senate I should like to read the closing part of that message:

Passed, as this bill has been, near the close of the session, and when many measures of importance necessarily claim the attention of Congress, and possibly without that full and deliberate consideration which the large sum it appropriates and the existing condition of the Treasury and of the country demand, I deem it to be my duty to withhold my approval, that it may hereafter undergo the revision of Congress. I have come to this conclusion with regret. In interposing my objections to its becoming a law I am fully sensible that it should be an extreme case which would make it the duty of the Executive to withhold his approval of any bill passed by Congress upon the ground of its inexpediency alone. Such a case I consider this to be.

He regarded it as inexpedient and called attention to the fact that perhaps Congress had not given due consideration to the matter, so near the close of the session, "in the existing condition of the Treasury and of the country."

So in the closing part of the message there does not appear any statement that he regards the claims as unjust.

Mr. BRISTOW. Mr. President——

The VICE PRESIDENT. Does the Senator from New Hampshire yield to the Senator from Kansas?

Mr. BURNHAM. Certainly.

Mr. BRISTOW. The Senator has read the closing of the message——

Mr. BURNHAM. I think the Senator read all the rest of it.

Mr. BRISTOW. In that part of the message read by the Senator, in the preceding paragraph, President Polk took the positive position that the claims were not justified and that the United States was not responsible.

Mr. BURNHAM. I thought I would read the closing part of the message, where the President bases his objections on other grounds.

In President Cleveland's message there is reference, and attention has been called to it here, to the decision of Chief Justice Fuller. Let me say that in that decision the question of the justice of these claims is not involved. The question of the validity of the law is not involved. The decision was with reference to a proviso, the substance of which was that assigned claims should not be paid, and it had nothing to do with the question of the validity of these claims.

The VICE PRESIDENT. The Senator will suspend a moment. The hour of 2 o'clock having arrived, the Chair lays before the Senate the unfinished business, which will be stated.

The SECRETARY. A bill (S. 6708) to amend the act of March 3, 1891, entitled "An act to provide for ocean mail service between the United States and foreign ports and to promote commerce."

Mr. FRYE. I ask that the unfinished business may be temporarily laid aside.

The VICE PRESIDENT. The Senator from Maine asks unanimous consent that the unfinished business be temporarily laid aside. Is there objection? The Chair hears none.

The Senator from New Hampshire will proceed.

Mr. BURNHAM. In the veto message of President Cleveland there is no reference to the statute of 1885; apparently it had not attracted his attention. His message was after 1891, when a part of these claims were paid.

Over against the message of President Pierce I should like to read from Daniel Webster, who made one or two favorable reports. Mr. Webster said, January 12, 1835, and this is from the official records:

Before the interference of our Government with these claims they constituted just demands against the Government of France. They were not vague expectations of possible future indemnity for injuries received, too uncertain to be regarded as valuable or be esteemed property. They were just demands, and as such they were property. The courts of law took notice of them as property. They were capable of being devised, of being distributed among heirs and next of kin, and of being transferred and assigned, like other legal and just debts. A claim or demand for a ship unjustly seized and confiscated is property, as clearly as the ship itself. It may not be so valuable or so certain, but it is as clear a right, and has been uniformly so regarded by the

courts of law. The papers show that American citizens had claims against the French Government for 615 vessels unlawfully seized and confiscated. If this were so, it is difficult to see how the Government of the United States can release these claims for its own benefit with any more propriety than it could have applied the money to its own use if the French Government had been ready to make compensation in money for the property thus illegally seized and confiscated, or how the Government could appropriate to itself the just claims which the owners of these 615 vessels held against the wrongdoers without making compensation, any more than it could appropriate to itself without making compensation 615 ships which had not been seized. I do not mean to say that the rate of compensation should be the same in both cases; I do not mean to say that a claim for a ship is of as much value as a ship; but I mean to say that both the one and the other are property, and that Government can not, with justice, deprive a man of either for its own benefit without making a fair compensation.

It will be perceived at once, sir, that these claims do not rest on the ground of any neglect or omission on the part of the Government of the United States in demanding satisfaction from France; that is not the ground. The Government of the United States in that respect performed its full duty. It remonstrated against these illegal seizures; it insisted on redress; it sent two special missions to France charged expressly, among other duties, with the duty of demanding indemnity. But France had her subjects of complaint also against the Government of the United States, which she pressed with equal earnestness and confidence, and which she would neither postpone nor relinquish except on the condition that the United States would postpone or relinquish these claims. And to meet this condition and to restore harmony between the two nations the United States did agree, first to postpone and afterwards to relinquish these claims of its own citizens.

I should like to have the attention of the Senate to the statement of Webster in this regard. He said:

In other words, the Government of the United States bought off the claims of France against itself by discharging claims of our own citizens against France.

Mr. BRISTOW. Mr. President——

The VICE PRESIDENT. Does the Senator from New Hampshire yield to the Senator from Kansas?

Mr. BURNHAM. Certainly.

Mr. BRISTOW. I should like to inquire upon what language in what treaty Mr. Webster based that conclusion.

Mr. BURNHAM. I think Mr. Webster's conclusion will not be questioned. While there is nothing in the language of the treaty of 1800 that definitely promises that this Government shall pay its obligation, such obligation is certainly to be inferred from the nature of the transaction between France and this country at the time we took the property, as Webster said, of these citizens of ours, and with that property purchased a release from the national claims of France against us.

Mr. BRISTOW. May I ask the Senator to read the language of Napoleon upon which that conclusion is alleged to be based in order that the Senate may judge whether or not Mr. Webster had that language in view?

Mr. BURNHAM. Whose language?

Mr. BRISTOW. Napoleon's; in the note which he added to the treaty. I have it here if the Senator has it not convenient, and I can read it for him if he desires.

Mr. BURNHAM. I will read it, as I have it here:

Bonaparte, First Consul, in the name of the French people, consented, on July 31, 1801, "to accept, ratify, and confirm the above convention with the addition importing that the convention shall be in force for the space of eight years, and with the retrenchment of the second article: *Provided*, That by this retrenchment the two States renounce the respective pretentions which are the object of the said article."

Those were the words that were inserted by Napoleon as a proviso.

Mr. BRISTOW. Is it not a fact that President Jefferson, immediately after the treaty was signed, proceeded to prosecute before France a number of these claims that are now pending, and was unable to get France to admit their validity, and were not other claims, referred to in this note of Napoleon, afterwards made a subject of treaty in 1803 and 1831 and settled in full?

Mr. BURNHAM. I do not so understand it, and I do not see how that is possible. The subjects of the treaty of 1803 and 1831 never embraced and never attempted to embrace anything that occurred on the high seas by way of spoliation prior to September, 1800.

Mr. BRISTOW. The Senator certainly does not claim that the treaty of 1803 did not refer to spoliations.

Mr. BURNHAM. Certainly not to spoliations prior to September 30, 1800; not a word.

Mr. BRISTOW. Of course President Pierce declared emphatically and specifically that it did.

Mr. BURNHAM. Possibly he may have been wrong.

Mr. BRISTOW. And he cites instances where claims prior to that time had been considered and paid.

Mr. BURNHAM. I do not know to what the Senator refers. I know simply this, that France did admit her liability from time to time, but said in answer, "We owe you so much, but before we pay you you have got to take care of our claims against you." In other words, she was insisting upon the treaty of 1778.

There is just a word that I want to read in conclusion from the speech of Mr. Webster. He said:

Mr. President, I have performed the duty of explaining this case to the Senate as I understand it.

These are the words of Daniel Webster in the conclusion of his speech January 12, 1835:

I believe the claims to be as just as were ever presented to any Government. I think they constitute an honest and well-founded debt due by the United States to these claimants; a debt which, I am persuaded, the justice of the Government and the justice of the country will, one day, both acknowledge and honorably discharge.

In this connection, I should like to place the opinion of Daniel Webster over against the message of President Pierce. I think vastly greater weight should be given to the opinion of Daniel Webster.

I wish to call attention to another fact. Whatever may be said with reference to these spoliation claims from January 20, 1885, when we passed the act which recognized the claims and sent them to the Court of Claims for the determination of their validity and of the amounts due, the legislative policy of this country has been settled. Up to that time these claimants had no established tribunal to which they could go with their claims. For 85 years they had been entirely without a tribunal except Congress, but in 1885 this act was passed and it manifestly meant something.

Is it possible that the Congress of the United States was passing an act to send claimants to a court for an idle purpose? Did it not mean that Congress understood there was something in these claims that was to be considered, that their validity was to be determined, and their amount? I submit that there was something in the act itself which was an implied recognition of these claims.

When these claims reached the court, by a unanimous decision, after long and deliberate consideration, they were regarded as valid claims against the United States. The court to which Congress had referred these claims determined unanimously in favor of them.

Now, in 1891 we passed a general deficiency bill and there adopted the policy of paying these claims. In 1899 we put into an omnibus claims bill appropriations for these claims, for a second time establishing this policy. Again, in 1902 and 1905, we made payments. In 1909, a year ago last January, the Senate passed an omnibus claims bill which contained a large amount in French spoliations.

I submit that Congress, by its acts heretofore, has established a policy for the payment of these claims, and that it has been done upon the fullest investigation.

Mr. BRISTOW. Mr. President——

The PRESIDING OFFICER (Mr. CURTIS in the chair). Does the Senator from New Hampshire yield to the Senator from Kansas?

Mr. BURNHAM. Certainly.

Mr. BRISTOW. I would like to inquire why the Senator has not included in this bill all the claims which the Court of Claims has decided were valid. If a part of these claims can be passed upon the theory that the Court of Claims has found them valid, why should a part of the same findings in the same cases be rejected and one part accepted?

Mr. BURNHAM. To what claims does the Senator refer?

Mr. BRISTOW. I refer to the insurance claims. In the case of the *Venus*, to which I have referred, there was $19,600 which the Court of Claims found was due the insurance companies. This bill does not carry that $19,600.

Mr. BURNHAM. Mr. President, in answer to that, the simple fact is, which I think the Senator knows very well, that no insurance companies were allowed their claims. The amount was large, and it would simply have overburdened the bill; it was inexpedient, as President Polk said it was very inexpedient, under present conditions, to put them in.

Mr. BRISTOW. I admit that the insurance companies should not be paid, but why should the findings of the Court of Claims be offered as an argument for the payment of a claim and at the same time reject the findings of the court in regard to another item in the same finding? It holds in one case and does not hold in another. Why should it not hold in both, if these claims are to be allowed because the Court of Claims has passed favorably upon them?

Mr. BURNHAM. The answer has been fully made. The Senator understands, and the Senate understands, why these large claims were not put in. It is simply because in so doing we should overload the bill. Precisely the same condition might arise if the Government owed a large claim and saw fit to make annual appropriations for its payment.

Now, various veto messages have been referred to. Here is the message of President Arthur that approved the act of 1885;

President Harrison approved the act of 1891; President McKinley approved the act of 1899; and President Roosevelt approved the acts of 1902 and 1905. All those four——

Mr. BRISTOW. I should like to inquire if those measures were approved as a part of other bills.

Mr. BURNHAM. Very likely, but I think all those Presidents scrutinized bills with great care. At any rate, they were approved by those Presidents.

Now, we have had 60 or 70 reports in this matter, and all but five of them have been favorable reports. It is, to my mind, a little singular, if these claims are so unjust and illegal, that these reports should have been made by very eminent Americans. I think that they stand out strongly against the five adverse reports. One is by Edward Everett; another by Mr. Everett; another by Mr. Livingston; another by Daniel Webster; another by Caleb Cushing; another by Rufus Choate; another by Truman Smith; another by Hannibal Hamlin; another by Charles Sumner—in fact, three were made by Charles Sumner—another by the junior Senator from Maine [Mr. FRYE]; another by Senator Hoar; another by Congressman Mansur. I find the name of the senior Senator from Maine here. Another report was made by the Senator from Wyoming [Mr. WARREN] and another by Senator Teller. These eminent men, after careful consideration, determined that these were just claims and ought to be paid by the Government of the United States.

Now, in brief, let us see where we stand with reference to this matter, and it is all I have to say in closing.

I say, in the first place, Congress has over and over again, five times by act, declared in favor of these claims. Congress by its act of 1885 did not send these claimants to the Court of Claims upon an idle mission. It would not have permitted them to go before the court and would not have put them to the large expense of paying their attorneys and the fees of witnesses without meaning to do just what the act says—that is, to give them a tribunal where the validity and amount of their claims could be determined. The act was, I believe, a recognition of these claims.

I want to read from the last message of President Taft. He says:

> I invite the attention of Congress to the great number of claims which, at the instance of Congress, have been considered by the Court of Claims and decided to be valid claims against the Government. The delay that occurs in the payment of the money due under the claims injures the reputation of the Government as an honest debtor, and I earnestly recommend that those claims which come to Congress with the judgment and approval of the Court of Claims should be promptly paid.

I believe that President Taft fully understood the nature of these claims, and that here were obligations of long standing, more than a century old, due from the Government of the United States to these claimants.

I believe that the Government took the property of these claimants, these owners of ships and of cargoes, and obtained the release of liabilities that were embarrassing, liabilities that might have made great trouble afterwards, liabilities that might have assumed large proportions. The Government took the property of the citizens of this country and turned it over, in effect, to France, and said: "Give us a release from these liabilities of ours under the treaty of 1778, and we will discharge you from all claims of our citizens against your Government."

Mr. BRISTOW. Mr. President——

Mr. BURNHAM. If the Government had not done that, Mr. President, what would have happened? We should have done with France precisely as we did with Spain. We should have said to France, "You must pay every dollar of this loss which, by your illegal seizures, you have caused the people of this country," and France would have paid it long ago, and that money would have been distributed just the same as the money that came from Spain was distributed.

The PRESIDING OFFICER. Does the Senator from New Hampshire yield to the Senator from Kansas?

Mr. BURNHAM. I have about concluded.

Mr. BRISTOW. If the Government took that property, why did not it say so, and why did not the men who were in charge of the Government just then so recognize it? Why did 50 years pass before anybody could be found anywhere who would admit that the Government had any liability whatever?

Mr. BURNHAM. There was no tribunal during those 50 years.

Mr. BRISTOW. Thousands of other claims were settled. Millions of dollars were paid to claimants, growing out of the same controversy, which France admitted were valid.

Mr. BURNHAM. It is very true that when our country received money as indemnity distribution was made, but in this case instead of getting money we got a release from obligations that were worth more than money. It seems to me that when the Government got such a release from France it ought to have paid its creditors.

I do not know that I care to say anything more, except that these matters have been before the Senate for years, and it was not even necessary that an opening statement should be made bearing upon the questions here involved. They were understood years and years ago, and the longer they have been delayed in payment the greater the wrong and injustice that has been done these claimants. I trust that the Senate, here and now, may take into account its action heretofore. Ever since 1885 we have been voting the payment of these claims as they have come up at intervals. We have been voting the payment, and I think hardly a question has been raised with reference to them; and now when we have before us the longest-delayed of these claims it would seem a great injustice that they should not be paid. I hope the Senate will pass favorably upon the bill.

Mr. CRAWFORD. Mr. President, I have that interest, and that interest only, in this discussion which grows out of the fact that I am a member of the committee, and I was a member of the subcommittee which reported this bill to the full committee, and have made an investigation of the matter, not exhaustively, but to as large an extent as my time would permit. I simply desire, so far as I can, to be of some assistance in getting the facts in their proper relation before the Senate. I think I am in a position to be a pretty fair juror in this case. There is not a dollar in the bill, if it passes, so far as I know, that goes to a single constituent of mine, or that will go to any person living within the borders of my State.

I resent, and I resent with some feeling, the inference—I do not believe the Senator from Kansas so intended it—but an inference which, I think, all who heard him might fairly draw, that the making up of this bill was the result of mutual cooperation on the part of those who, in some manner, were interested in the results that would flow from it; that it was a sort of combination process which was followed in making up the bill; and that the material thing considered in making up the bill was to put in those measures that might perchance bring to its support the largest number of votes.

I say I resent, and I resent with some feeling, an inference that might be drawn from the statement made by the distinguished Senator from Kansas that motives of that character governed those who joined in a favorable report of the bill. I think I can show that on the face of the record I am completely vindicated and acquitted of such a charge as that, because of the fact that not one dollar of this money, should it be appropriated, will go within the borders of the State which I have the honor in part to represent.

Mr. President, this bill was made up according to certain rules. Those rules were framed for the guidance of the subcommittee. Those rules were adopted by the entire committee, and my recollection is that the Senator from Kansas concurred, and concurred without trying to restrict them.

Mr. BRISTOW. Mr. President——

The VICE PRESIDENT. Does the Senator from South Dakota yield to the Senator from Kansas?

Mr. CRAWFORD. I do.

Mr. BRISTOW. I desire to state here that the Senator from Kansas never concurred in any rules relating to these spoliation claims that would have contributed, directly or indirectly, in any way to give them favorable consideration by the committee of this body or the subcommittee.

Mr. CRAWFORD. I will say to the Senator from Kansas that I hold in my hand a copy of what was submitted to the subcommittee by the full committee and designated "Omnibus bill rules." It was adopted by the full committee and given over to the subcommittee. I want to know from the Senator if he opposed the adoption of those rules so designated "Omnibus bill rules?"

Mr. BRISTOW. I wish to state to the Senator, to refresh his memory, that the Senator from Kansas said that he would have nothing whatever to do with the formulation of any rules that were made for the purpose of framing an omnibus bill which should include the French spoliation claims.

Mr. CRAWFORD. I am willing to take the Senator's word for that. I had no recollection of it. My recollection and my understanding was that the rules which were submitted for the guidance of the subcommittee were rules unanimously agreed upon by the full committee.

Mr. BRISTOW. If the Senator will permit me, while I am on my feet, I desire to say that it was not my purpose to reflect upon the motives or the integrity of purpose of any member of the committee, but in regard to the manner in which this bill was framed. I made the statement, and I now repeat it, that

these French spoliation claims, standing upon their own merits, unaccompanied by other claims which are meritorious, could not pass Congress, and that other claims have been included in this omnibus bill in connection with the French spoliation claims in order to give the bill strength and to put it through. If it were necessary, I could repeat conversation after conversation which I have had with different Members of this body that would bear out that assertion.

I would not be discourteous to anyone; but it is a matter well known in legislation that bills of this character are framed in order to give them strength in passing the body. Things are included in these omnibus measures that give them strength, and things are excluded which would weaken them. I state that as a fact; and everybody knows that that is the means used in making up bills of this character. This is not a reflection upon the personal integrity or the integrity of purpose of any member of the committee; it is an unfortunate legislative practice, with which the Senator from South Dakota is familiar. I do not approve of such practice, especially when it comes to passing claims, because by such a practice as that claims that are not worthy are incorporated in bills and passed. There is no Senator on this floor who does not know that that is the case.

Mr. CRAWFORD. Mr. President, I did not yield to the Senator from Kansas for extended remarks about his general views in regard to this matter, for he has already taken several days to present them to this Senate, but I did rise to repudiate, and to repudiate utterly, an inference which I think might fairly be drawn, that the making up of this bill was a logrolling process. I take the liberty to call attention to the rules that governed the subcommittee:

OMNIBUS BILL RULE.

First. In all claims of individuals, to exclude cases where the court has found inexcusable laches; this rule not to apply to churches, schools, and other corporations and quasi corporations which could not under a ruling of the Southern Claims Commission present their claims to that commission.

That is the first paragraph. Is there any indication in that that it is put in there with some ulterior purpose and to derive some undue and unfair advantage in making up the bill?

Second. To allow all claims for use and occupation of real estate and for stores and supplies, which are not barred by any other rule, where the court has made specific findings as to the rent (including incidental damage) of such real estate and the value of such stores and supplies.

A rule, and a fair rule, to follow in establishing some line of demarcation in making up the items of this bill.

Third. To allow no claim for the destruction of property (as by accident, the depredations of soldiers, or military necessity) unless the same was destroyed to furnish materials for the use of the Army, and then only for the value of such materials as materials and not for the value of the building, if given or included in rent found due; this rule not to apply to churches, schools, and similar corporations and quasi-corporations where the value of the building destroyed for materials is given.

That is the third rule we followed in making up this bill.

Fourth. To allow no claim whatever wherein there is a question as to the loyalty of the claimant as determined by the court.

Fifth. To allow all claims arising from French spoliations as found by the court, except the claims of assignees and insurance companies.

Sixth. To allow no claims other than those based upon findings of the Court of Claims certified prior to January 1, 1910.

This bill, Mr. President, was framed under these rules. When it came to the French spoliation claims, the rule which governed the subcommittee in framing or reporting the bill to the full committee was to allow all claims arising from French spoliations as found by the court, except the claims of assignees and insurance companies.

Mr. WARREN. Mr. President——

The VICE PRESIDENT. Does the Senator from South Dakota yield to the Senator from Wyoming?

Mr. WARREN. Would it disturb the Senator if I should call his attention—perhaps he intends to remark upon it—to the origin of these omnibus bills, and why the idea was adopted?

Mr. CRAWFORD. If the Senator will permit me to go on, I will come to that a little further on.

Mr. WARREN. Perhaps the Senator himself has looked that up. I think it would be well to have the statement made.

Mr. CRAWFORD. Now, Mr. President, it is always easy to assume that you are the only one that can possibly be right; that your reasoning processes are absolute and are perfect, and that he who would question them must necessarily be wrong and willfully wrong. I admire the Senator from Kansas [Mr. BRISTOW] for his courage and his tenacity, but I do believe he is a good deal of an old Puritan, who decides that he is right and then that everybody who disagrees with him should be burned at the stake. [Laughter.]

There are two sides to this case. With absolutely no impression one way or the other, except what I formed years ago in seeing occasionally in the lines at the head of a newspaper column, "French spoliation claims," I had no judgment in the matter; and if ever a Senator looked into the records and reports without any preconceived notions or prejudices in regard to these claims, I am that Senator.

What is it to me one way or the other in any private relation or personal interest whether these grandchildren of some old Revolutionary claimants shall get a penny or not? Nothing—absolutely nothing. I think, however, we have a right to weigh these matters for the purpose of doing our duty conscientiously and reaching a conclusion with the judgment and reason that God has given to us. I think that we should have some courage in expressing that conclusion, without being under the imputation that if we vote in favor of these bills a roll call will be published somewhere and the inference drawn that our motives in so doing were wrong and that we have sold out to somebody or some interest somewhere or other. In my short career in this body, and early in its record, I propose to say here and now that no fear of the publication of a roll call is to have any weight whatever with me, nor does it with other Members of this Senate, unfair though it may be.

Mr. President, we are living at a long distance away from the time when these claims originally arose and we are not apt to see the situation now as it then was. Mr. Sumner, in that wonderful report of his, which I will put before any fair-minded reader for comparison with the veto messages of Franklin Pierce and James K. Polk and Grover Cleveland——

Mr. BRISTOW. Mr. President——

The VICE PRESIDENT. Does the Senator from South Dakota yield to the Senator from Kansas?

Mr. CRAWFORD. Yes; I will yield; but I am going on here to speak at some length and I want time. The Senator from Kansas has had a great deal of time, and I do not care to have him make a long speech when he interrupts me. I yield.

Mr. BRISTOW. I should like to inquire from what document the Senator from South Dakota is reading.

Mr. CRAWFORD. I have not yet read anything. I know what the Senator is about to say, and that is that this is the brief of somebody. Yes; it is part of a brief, and I make no apology for using credible statements of fact, whether they come in the form of a brief or from some other source. An attempt to discredit a statement in a brief because it is in a brief is cheap. I yield to the Senator.

Mr. BRISTOW. When the Senator's heat and passion have subsided——

Mr. CRAWFORD. There is no heat or passion about it.

Mr. BRISTOW. I should like to know what brief it is, if he will be kind enough to answer me.

Mr. CRAWFORD. It is from the report of Charles Sumner, made in 1864, dated March 12. It is in a document in which J. Henry Scattergood, representing an insurance company of Pennsylvania, submitted his claim to the committee in charge of this bill in the other House.

Mr. BRISTOW. I should like to further inquire, if the Senator will permit, if any of the claims that are advocated by Mr. Scattergood are included in this bill?

Mr. CRAWFORD. That is entirely immaterial; it has nothing whatever to do with the argument which I propose to make; and it is not worthy of any consideration when we are weighing the merits of this case. It is not entitled to any consideration whatever. That is my answer.

Mr. BRISTOW. Would the Senator be kind enough to state whether or not any of those claims of which Mr. Scattergood is the advocate have been incorporated in the bill?

Mr. CRAWFORD. They have not; but, Mr. President, I decline to yield further, because I do not propose to have my remarks made here chopped up into fine pieces as they were once before when I took the floor in the Senate for a discussion.

I said a moment ago that we are living a long distance away from that period, and we are; but what was the situation? I read from Mr. Sumner's report:

France alone destroyed in American ships two thousand and ninety.

The Senator thinks that this is a small matter for a little Republic, the entire settlement of which was still strung along the Atlantic coast and which was practically sustaining itself by commerce on the high seas, to have its shipping interests spoliated, destroyed, and scattered to the four winds, and the goods of its merchantmen on these ships and the vessels themselves appropriated by France. Senators may talk about it indifferently now, but the people did not look at it as a matter of indifference then.

Mr. BRISTOW. Mr. President——

Mr. CRAWFORD. Two thousand and ninety of those ships were destroyed by the French.

The VICE PRESIDENT. The Senator from South Dakota expressed a desire not to be interrupted.

Mr. CRAWFORD. Now, let me tell you something else. There was a time in the history of this country, during the Revolutionary War, in the dark days at Valley Forge, when our American soldiers were going barefoot and leaving blood stains upon the snow, when Gen. Gates was plotting against Gen. Washington, when everything seemed absolutely hopeless and going to pieces, and the only salvation we had was the rescue that France brought to us through the treaty of 1778, negotiated by Benjamin Franklin. That was the treaty that saved us, that brought us aid, and enabled us to witness Yorktown. What did France do for these feeble colonies? She gave them $280,000,000 in money and sent them 20,000 soldiers, and many and many a Frenchman lost his life on land and on sea in supporting America and enabling her to gain her independence during that period.

In order to get that aid we entered into a solemn treaty with France. In that treaty we solemnly pledged that we would be an ally of hers; that we would guarantee to her our aid in protecting her islands in the West Indies; that we would assist her in other ways; that our ports should be open to her privateers to come and go without paying any duty or without restraint; and that we would exclude other nations from privileges of a similar character. That was the solemn treaty between France and the United States.

On our part we were obliged to do those things and on her part she "delivered the goods." She gave us the $280,000,000 and gave us 20,000 soldiers and guaranteed the permanent integrity of the American Republic. We were friends in sentiment and in sympathy, as well as in mutual interest, and we accepted from her this money and these soldiers and undertook this obligation.

After a while things changed. We secured our independence. We became a Nation. England and France got into difficulty. France expected us to keep our pledge under the treaty of 1778, but we did not do it. We may have been justified in not doing it. It was a desperate situation to be a football in the great game of battledore and shuttlecock between the nations of Europe. For this little Republic, impoverished as she was, to go in as an ally of France and attempt to keep her treaty was a serious matter, but, so far as treaty obligations were concerned, we were bound to do it, and we did not do it. The result was France felt hurt and aggrieved and indignant, and she and other nations—Denmark, Italy, and England—preyed upon the commerce of this young Republic everywhere on the high seas.

The distinguished Senator from Kansas would have us believe that our citizens were pirates or privateers, because one of them was found in the Mediterranean Sea with silver dollars aboard his ship. Are we to assume that these men who owned 2,000 ships, citizens of this young Republic, prosecuting its commerce on the high seas, were privateers and pirates, and because our obligations to them and their children have never been paid that it is absolutely dishonest, a burning shame, and a disgrace even at this late day to undertake to do what is fair toward them? Privateers and pirates! These merchants of Salem, and Boston, and Baltimore, and Philadelphia, and Roanoke, and Charleston, and wherever they have been upon the high seas—pirates and privateers!

France never paid for the spoliation of our ships. England did. Senator Sumner gives the list in his report. Great Britain paid for 217 ships that were destroyed by her, and paid on an average $47,672.81 apiece for them. Spain paid for 40 of them an average of $8,136.49 apiece. France paid $10,504.20 for 357 vessels. I will explain that. They paid this amount under Article IV of the treaty of 1800, for prizes that came within the class of debts instead of torts. Instead of paying for 2,090 vessels, she paid under that clause for 357, and the rest she did not pay for. Spain paid for 320; Denmark for 112; Naples for 51; Mexico for 64; and Colombia for 5.

A small matter, was it? It was the one lively subject for which Gouverneur Morris, Coatsworth Pinckney, James Monroe, and special commissioners worked over and over again to secure some kind of compensation from France. When they presented their claims, did France deny her liability to pay for the ships that had been so spoliated and destroyed? No; but she urged a counterclaim. She said, "You owe us; you violated the treaty of 1778. When we came to your rescue and saved your young Republic with our $280,000,000 in money and our 20,000 soldiers you entered into a solemn obligation and treaty with us to assist us in retaining our possessions on the Western Hemisphere and in throwing your ports open to our privateers, but you did not do it; we have lost our West India Islands and American possessions, and you owe us; you settle with us and we will settle with you." Talleyrand in every audience, if he granted an audience—for sometimes our representatives were snubbed and sent away without an audience—but whenever he granted them an audience, presented the claim of France against the United States growing out of our breach of the treaty of 1778.

It occurs to me, Mr. President and Senators, that we are taking a very dangerous position here when we advertise to the world that a foreign nation can prey upon our commerce, destroy our ships, and confiscate their cargoes, and we will use the claim to balance one like that which France had against us growing out of the $280,000,000 grant and the 20,000 soldiers and the treaty of 1778—we will use the claim for the purpose of balancing theirs and then we will snap our fingers at our citizens who sustained the losses and tell them "to go to."

The Senator said that it is an unpleasant duty to oppose this bill. Oh, he can be a great advocate before the American people and be a hero for attacking a bill under a charge that it is a logrolling scheme, that it is bad legislation, and that he was the only brave man in the Senate to raise his voice against it, and the prairies of Kansas may sound from one end to the other in huzzas of praise of his courage, and all that. It may be an unpopular thing to stand here for the integrity of the United States under the treaty of 1778 and under an obligation to take care of our own citizens, but I do not care a farthing with reference to who is playing the rôle of a hero and the courageous man here. Let us get to the real merits of the case.

France did not deny her liability for these claims of spoliation, but asserted that over against them were our obligations to her for the violation of the treaty of 1778. It is absolutely unfair to separate from the context, from what went before and what followed, the note that Napoleon wrote in, and undertake to create the impression that that was all—the meager line and a half that Napoleon put in there. No; it was not all. You have got to read what occurred before it and what followed after it to find its true significance.

When you do that you will see that it was clearly a mutual abandonment of claims, France abandoning hers against the United States and the United States abandoning hers against France, so that each would never assert its claim against the other—as solemn and open and unequivocal an agreement as was ever made between two countries. Do you try to get away from that by saying that the line and a half that the First Consul put in is too scant to show its real meaning? If you were trying a lawsuit and attempted a thing of that kind, you would be snapped up by the opposing lawyer, and the court, when the case was fully stated, would rule against you for being so unfair as to put in a mere part of the record of the testimony without all the facts.

These claims were not in the treaty of 1803 when we made the Louisiana purchase. Mr. Sumner tells us about that. The claims against France satisfied by that treaty were prize debts, specific debts, listed debts, covered by another article in the treaty.

They were not for spoliation torts, but the clause in the treaty of 1800 relating to torts growing out of spoliations was Article II, and that was the one they at first left open for future settlement. The American Senate would not stand for that and struck it out, and put another provision in its place, putting an eight-year limitation upon that. That went to the First Consul, and he struck that out and put in this proviso about the pretensions of each nation, one against the other, being mutually abandoned. These were the claims set out in Article II of the proposed treaty. That came back to the American Senate, which ratified it.

I will say to the distinguished Senator from Kansas, if he takes my money to pay a debt of his, I do not care whether he has any agreement with me or not to repay it, I will go into the courts of this land and sue him upon his implied obligation and make him pay it. When the Government of the United States took the claim against France for these ships and cargoes and used it to satisfy the claim which France had against us for failing to comply with the treaty of 1778, the Government of the United States paid a governmental obligation with claims belonging to her private citizens. Is a nation to juggle thus with her citizens and say "we will not pay the obligation thus appropriated?"

You ask why did they not pay it right off? Claims for the destruction of ships scattered to the four ends of the earth on the high seas, making voyages as sailing vessels which occupied months and months in those days, from which they might not hear for months and years, would necessarily be tardy.

That was not all. This Nation during the years that followed was impoverished. That was not all. We did not have

all the facts with reference to this treaty and these negotiations with France until about 1826, when all the facts were laid before Congress, and then appropriations were urged, and after long years were partially made. Would the distinguished Senator from Kansas have us believe that when Benjamin Harrison approved, during his term, the general appropriation bill that appropriated $1,304,095 to apply on French spoliation claims that he was a party to some logrolling scheme to loot the United States Treasury and to pay the money to unworthy people?

Mr. BRISTOW. Mr. President——

The VICE PRESIDENT. Does the Senator from South Dakota yield to the Senator from Kansas?

Mr. CRAWFORD. Yes; if the Senator will just answer that question.

Mr. BRISTOW. May I inquire if the item of $1,300,000, to which the Senator has referred, was not on a general deficiency appropriation bill——

Mr. CRAWFORD. Yes.

Mr. BRISTOW (continuing). That passed on the last day of Gen. Harrison's term as President, late in the day, and to have vetoed the bill would have immeasurably embarrassed the Government and required an extra session of Congress?

Mr. CRAWFORD. That is the distinguished Senator's view of it. Gen. Harrison made no protest against it, uttered no doubt in reference to it. He was followed some years later by President McKinley, who approved an omnibus claims bill carrying an appropriation to pay a part of these claims. According to the Senator from Kansas, because he does not approve of them, omnibus claims bills are wholly bad, and every man that votes for one is in some sense betraying the public interests and is in default; but Mr. McKinley signed an omnibus claims bill that included in it an item of $1,055,473.04 for the payment of French spoliation claims.

The distinguished Senator from Kansas, as I am myself, is a great admirer of ex-President Roosevelt. I know that. I frankly admit that I am. President Roosevelt approved two items to go toward settling French spoliation claims—one for $798,631.27 and another for $752,660.93. Any word of protest, any word of doubt, any word of dissatisfaction expressed by either Presidents Harrison or McKinley or Roosevelt with reference to these claims? Not a word. President Pierce and President Polk vetoed bills relating to these claims before we had a Court of Claims. They had no judicial determinations before them, and they saw fit to veto them. What have we created a Court of Claims for?

Mr. President, we are getting into a frame of mind nowadays in which the decisions of courts are simply sneered at. Notwithstanding solemn trials in court, where witnesses are called for and against each side and put to the severest test of cross-examination, where able counsel are heard, with able and exhaustive arguments to review all the facts, and where courts sitting in their integrity and under their oath, and weighing facts and law, render solemn judgment, we are getting into an atmosphere that seems to suggest that we flippantly toss them all aside, and that the individual set himself up in a self-righteous attitude by personal judgment to overrule the courts of the country, because he, in a hasty examination of some report or some record or some presidential veto, has decided that the courts of the land are wrong; that the decisions of these tribunals ought to be sneered at and set to one side, and Congress should lightly override them and pay no attention to them. I am not in sympathy with such sentiments, Mr. President.

Mr. BRISTOW. Mr. President——

The PRESIDING OFFICER (Mr. SWANSON in the chair). Does the Senator from South Dakota yield to the Senator from Kansas?

Mr. CRAWFORD. I do.

Mr. BRISTOW. Let me inquire, then, why the Senator in the preparation of this bill has not followed the recommendation of the Court of Claims and allowed the claims which it recommended, if we should abide by it.

Mr. CRAWFORD. We followed the rules that were unanimously agreed upon by the committee as a whole and submitted to us for framing the bill. Not putting every claim in it does not mean that the claims which are not in it are bad.

I will ask the Senator, why are we allowing war claims here fifty years after the surrender at Appomattox? Why have you not a right to say as to every one of these Civil War claims, no matter how worthy they are, "it is 50 years since peace was declared, and therefore they ought to have been allowed in 1870 instead of 1910, and because they did not pay them in the first Congress thereafter there is a presumption that that Congress decided they ought not to be paid." That is not sound reasoning.

Mr. BRISTOW. Mr. President——

The PRESIDING OFFICER. Does the Senator from South Dakota yield further to the Senator from Kansas?

Mr. CRAWFORD. Yes; if the Senator does not desire to make a speech, but simply wishes to ask me a question.

Mr. BRISTOW. If we must infer that the rules of the committee are superior to the decisions of the courts, then——

Mr. CRAWFORD. I do not understand how the Senator can ask such a question. The fact that the committee simply determined that in this bill it would not put certain claims is not to be construed as meaning that it has decided that the claims not put in are not valid. It means simply that action on those claims is deferred, and that they will be considered on their merits when they are reached.

Mr. BRISTOW. But when the same claim includes an amount for one party, which the court finds is just, and an amount for another party, which the court finds is just, and the committee allows the claim found for the one party and rejects the claim for the other, does not, therefore, the committee disregard the findings of the court?

Mr. CRAWFORD. It does not. It is no more consistent to say that than it is to say that because Congress does not appropriate at one session all of the money which is going to be required to put up a public building at Huron, S. Dak., but appropriates only the first installment, what is necessary to extend over the first year, it has decided that a claim for an additional amount is absolutely unfounded. That is a mere matter of discretion here, and it does not go to the merits of the question at all, and I decline to discuss it further.

What are these adjudications of courts for? Why do you not abolish the Court of Claims? What was it created for, in the first place? It was created to take off the shoulders of the Congress the impossible burden of sifting facts, hearing testimony, weighing evidence, and making findings, because the Congress can not find the time to do that. To undertake to make a blanket appropriation without evidence, without a decision of a court, would be reckless, and therefore Congress created the Court of Claims.

The Senator says that its decisions are not to be considered seriously. I was reading some of the arguments made by learned counsel in these cases. No more able counsel can be found in the United States than the lawyers who appeared on the part of the Government to contest these claims; equally able counsel appeared on the other side; and no more patient, tireless industry was ever displayed by a court of justice than that displayed by these judges in weighing in these cases both the law and the testimony. They were not ex parte proceedings. There was no snap judgment, and no guess.

The record shows that only about 14 per cent of the claims that were presented actually prevailed, because the chaff was thrown out and only the wheat was saved. But we are to throw this aside; we are to disregard the findings of a judicial tribunal created by Congress for the purpose of advising it as to the questions of law and questions of fact, and we are to go behind the court and in our way decide as to what items should be considered in determining damages. We are to set aside all of the rules of international law, all of the precedents, all of the conclusions that have been established as a result of time and experience, by which difficulties in proof are overcome, by which freight shall be allowed pro tanto, or, if that can not be done, then as a general rule of fairness it shall be two-thirds of the whole. The Senator from Kansas would flippantly set aside all rules of that character, established by the courts of this land, as the result of long years of experience, and would arraign this Congress as failing to do its duty and denounce every Member of it who has the hardihood to vote in accordance with the solemn findings of a judicial tribunal rendering solemn judgment. He would impugn that man either as not sincere in his vote or weak in his brain, because the Senator from Kansas does not agree with him.

These are the findings of our courts, and I am not going back of the findings and the conclusions of a court that have not been changed on rehearing and which stand here as a solemn judgment, because I am afraid that the judge did not exercise the honest judgment that I would have exercised; that the judge was not as scrupulous and jealous of the interests of his country in protecting its treasury from fraud as I would have been. I am not willing to indulge in the presumption that the judges of all tribunals, because I did not preside over them, were vulnerable and make mistakes, or that they were tricky and dishonest, and that therefore it is necessary for me to review their judgments and satisfy myself from first sources that they have not been tricky and dishonest, in order to protect this great nation of 90,000,000 people. That is the inference; that we ought to be put on the blacklist for standing here and

proposing to legislate in accordance with the findings and the conclusions solemnly entered by a tribunal created by Congress for that purpose.

Now, go into my State and read to the people that I have surrendered to the interests, simply because I stand by a plain, well-established rule of procedure and justice and have come to that conclusion after an examination as conscientiously as has the Senator from Kansas arrived at his conclusion. He is a conscientious man and a brave man—no braver ever sat in a seat in the Senate—but I must refuse to be cowed in the presence of so brave a man as the Senator from Kansas.

Mr. President, I have the audacity here, notwithstanding the three-day attack on this bill, to assert that in my honest conviction, as deep-seated and as firm as that of the Senator from Kansas, there is equity in these claims.

Petition after petition, by the scores and hundreds, have gone into the records in their favor. Report after report in their favor has been made. One soon after the war is adorned by the name of Marion, of South Carolina; others adorned by the name of Daniel Webster and Rufus Choate and John Marshall, and they have been recognized by McKinley and Roosevelt and Harrison. We will put these names against your Silas Wright, your Franklin Pierce, and your James Buchanan; and we will at least claim this: That we can be just as sincere and honest in defending the judgment of these great men as you can be in seeking defense behind the veto message of Cleveland or Pierce or Polk.

Mr. President, I am in favor of these spoliation items if we are going to pass this bill at all. Will you strike them out and leave the southern war claims in here? I am willing to take the findings of the court as to all, but I am not willing to exclude the findings of the court as to the descendants of these rugged old sailors and regard it as to the men or the descendants of men who at one time were, after a fashion, at war with this Government. No; if one goes out, let them all go out. But the principle I followed in this bill is, that the report from the Court of Claims, with all the machinery furnished it by the Government to sift and find the facts and give us conclusions of law, is a sufficient justification for this Government keeping the obligation and making good the judgments so declared.

Mr. BRISTOW. Mr. President, the Senator from South Dakota [Mr. CRAWFORD] has accused me of many things. The first was that I am a Puritan. I deny the charge. My ancestors were not fortunate enough to be Puritans. They happened to settle on the Rappahannock, in Virginia, about 1680.

The Senator from South Dakota seems to think that I am a hero. I am no hero; at least, I have not been feeling like a hero for three days. During this debate I have not been greeted with that acclaim which is given to a hero.

The great Senator from South Dakota says he stands for the integrity of the Nation. He has certainly made a noble stand this afternoon; but he should remember that for 50 years the founders of this Republic, and those who guided its destiny during its early days, never admitted that these claims were just.

I have been very much interested in the calm and deliberate discussions of the charming and brilliant Senator from South Dakota. They demonstrate him to be a gentleman of fine poise, with gentle and engaging manner. Indeed, they recall to my mind the experiences of my childhood. My father was at one time a justice of the peace, in the early days in Kansas, and I used to hear the lawyers discuss the cases before him. Until this afternoon it had been long since I had listened to discussions of that character. But those early scenes have been brought vividly to my mind in the last few minutes. I did not know that the same style of oratory was indulged in in the Senate until the experiences of this day.

As for the courts, I am not attacking them. I am defending them. The committee in preparing this bill follows the decisions of the courts when they suit it and ignores them when they do not.

When the decision of the court in a case finds that two claimants are entitled to recover certain sums of money, the committee forms a rule which excludes one, in defiance of the findings of the court, and favors another. It then makes no explanation justifying this favoritism between two claimants standing upon the same legal authority and backed by the same legal decision. When some Senator sees fit to inquire as to why this undue discrimination between claimants that have the same legal standing, this modest inquirer for light is crushed by the logic and lacerated by that keen and incisive eloquence for which the great Senator from South Dakota is so widely distinguished and of which we have had such a brilliant exhibit here this afternoon. After thus disposing of this impertinent inquirer he then, burning with indignation at the criticisms offered, turns upon a certain number of Senators interested in the other claims in the bill, upon which the court has passed and found to be just, and which it says ought to be paid, and declares that unless these spoliation claims are included in the bill the rest of the claims must go out and the bill beaten.

I leave it to the judgment of the Senate, if, when its nerves have been sufficiently quieted, since listening to the profound and moving oratory of the distinguished and great Senator from South Dakota, to determine whether that has not been one of the things concerning which I have complained—that this bill is organized to carry through the French spoliation claims, and that these other claims are not put in because of their merits, but for the purpose of pulling through the $842,000 of spoliation claims. I leave that to the judgment of the Senate, after listening to the Senator from South Dakota.

Of course I feel very much crushed. He says I am brave. I make no pretensions to great bravery. I never have been accused of any special bravery. I do not feel very brave now; indeed I do not. My courage has been wholly exhausted. The threatening attitude, the blazing eyes, and the imposing presence of the mighty Senator from South Dakota, advancing toward me as he did, have driven out of me the small amount of courage that I had.

Of course I did hope that I might be able to offer a few feeble remarks to induce the Senate, if I could, to recommit this bill and take out that part relating to insurance. But after this awful assault which has been made upon the founders of the Republic, upon President Polk and President Pierce and the Members of the American Congress for the first 50 years of our history; after this fierce arraignment of these great men, who founded and established this Republic, I feel that I should first appeal to some one who can to come to their defense. President Polk ought to find here some friend who will take up and defend his honor, even at the awful hazard of incurring the displeasure of the Senator from South Dakota. Polk declared that these claims were not just and ought not to be paid. How fortunate for his peace of mind that he never knew that the Senator from South Dakota was to appear in our national life.

Then I hope the Senators from New Hampshire will come to the defense of their great citizen, the only one of that State's noble sons who has ever been honored with the Presidency of the Republic. He declared that these claims ought not to be paid. And there certainly are men now in this Chamber who can be found who will defend the great Cleveland, who so recently passed away—a man who did have some of that courage which the great and distinguished Senator from South Dakota attributes to me. If he were here he might be able to defend himself even against the Senator from South Dakota. But he is gone, and somebody ought to be found to defend him.

He, in an elaborate review of these claims, declared that they were not just and ought not to be paid, and he had before him then the decisions of the courts. I never knew that Cleveland had been accused of being a revolutionist or of denouncing the courts of the country, yet he boldly stated that he did not think that these claims ought to be paid. Indeed, I will venture to suggest to the Senator from South Dakota, that the very statute that referred these cases to the court said that its findings should in no way carry an obligation upon the American people to pay the claims.

But I will pass all that and will ask the great Senator from South Dakota to explain why, if a vessel worth $10,000, as found by the courts, and a cargo worth $3,151.85, is insured for its full value and the vessel is lost—insured against war and pirates and all things of that kind—and a French privateer takes it and the insurance company pays the entire loss as it agreed to do, why should the owner of the vessel be paid $6,000 more than the ship and cargo were found to be worth?

Mr. CRAWFORD. My answer to that is simply this: That the Court of Claims, with all of the facts, with all of the law before it, so determined; and it is not a safe method of reviewing the judgment of the Court of Claims, in its findings of fact, to simply state a conclusion which may not include in it all of the processes followed by the court in arriving at that result. Therefore I would accept the solemn judgment and finding of that court, which has never been reviewed, reversed, modified, or set aside.

Mr. BRISTOW. The Senator, then, would have the Government pay the insurance on the vessel, the premium which the owner of the vessel paid, and the freight which the vessel would have earned if it had made the voyage, because the court found those items were due?

Then, we will turn to the case of the *Venus*, which had on board $31,000 of specie and $570 worth of silk stockings. There

was insurance of $20,000 on this cargo. The value of the cargo was $31,570, the insurance premium was $3,500, the freight earning was $4,144, making in all $39,214.

The insurance company paid all that it obligated itself to pay, just as it did in the other case—the courts found that it did—and the committee deducts this insurance paid from the claim and refuses to reimburse the insurance company in this case, although the courts found that it ought to be reimbursed—the same findings in both cases. The committee follows the judgment of the court in one case and disregards it in the other. Was this because the committee is unfriendly to the courts and its members belong to that class of citizens who see fit to denounce the courts and disregard their orders or decrees?

Mr. CRAWFORD. That is simply a conclusion which the Senator from Kansas draws. The Senator from Kansas would draw the conclusion that because every valid claim is not embraced in this bill it is denied any right of recovery at any time hereafter; that it is absolutely foreclosed.

Mr. BRISTOW. Why does the Senator discriminate between one claimant and another in the same claim?

Mr. CRAWFORD. Because we took all that were in one group and postponed action on them at this time as a matter of expediency and not as a matter of barring them from their rights. That is the simple truth about that.

Mr. BRISTOW. How did the committee arrive at a conclusion as to which claimants ought to be preferred? That is, what element of expediency was considered?

Mr. CRAWFORD. I do not know that it is necessary to go into all of those details here. The committee so determined.

Mr. BRISTOW. Then why does the Senator denounce another Senator so violently because he contends that those claims which the committee has presented here, wherein it has recognized the decisions of the courts, should not have been presented?

Mr. CRAWFORD. If the Senator will permit me, I have not denounced anyone, except that I have defended myself as a member of that committee, and I will confess with some feeling against what it seemed to me was only the fair conclusion that all who heard the Senator would draw, that because others on the committee viewed this matter differently from the Senator they should be censured, and censured severely, for having gone into a sort of a logrolling scheme here—scratch my back and I will scratch yours—at the expense of the Public Treasury in framing this bill. I think any Senator left open to an inference from the remarks of the Senator from Kansas such as that would have a perfect right, no matter what kind of eloquence the Senator calls it, whether justice-court eloquence or cornfield eloquence, to feel some indignation and to resent any reference of that character. It makes no difference to me what class the Senator may put others in, I shall resent an imputation of that kind.

Mr. BRISTOW. May I ask the Senator if it is any more criminal for one Senator to disagree with the court in regard to the justice of a claim than for those of the committee to do it?

Mr. CRAWFORD. Not a bit; and I wish the Senator and I might always stand on the proposition that it is not any more criminal, that one Senator has as much right to the free expression of his opinion and the assertion of his judgment as another, and that he should not be arraigned as in some manner being derelict because when he does so express his judgment or act upon it it does not fall in on all fours with the view taken by the Senator from Kansas, whom I highly respect, but I think he is pretty severe in his criticism on that line.

Mr. CLARKE of Arkansas. Before the Senator from South Dakota takes his seat I should like to ask him a question. I have a very high respect for his opinions and I listened with much attention to his entire speech. He will recall that these claims were referred to the Court of Claims under the act of Congress of January 20, 1885, making the reference with certain specific conditions. He will find in the second clause of section 6 this limitation on the power of that court:

> Such finding and report of the court shall be taken to be merely advisory as to the law and facts found, and shall not conclude either the claimant or Congress.

The entire argument of the Senator from South Dakota was based on the fact that the court had rendered a solemn judgment, and it is the very essence of a judgment that it should be binding on the parties. How does the Senator work out that conclusion when the court has never adjudicated on the liability of the United States?

Mr. CRAWFORD. If the Senator will permit me, I was acquainted with that language. I do not consider that we are absolutely bound as the parties to a lawsuit are in court by a judgment.

Mr. CLARKE of Arkansas. Throughout the Senator's entire remarks he attached importance to the fact that it was the judgment of the court.

Mr. CRAWFORD. So far as guidance here is concerned as to the law and the facts in the case.

Mr. CLARKE of Arkansas. The statute says it shall be merely advisory as to those things, and not binding upon either party. Therefore the court had no obligation resting upon it to determine the liability of the United States, and it ought not to do it.

Mr. CRAWFORD. If the Senator will permit me, it is the best advice and the best possible light that can govern us.

Mr. CLARKE of Arkansas. The Senator heretofore in his remarks proceeded upon the theory that the very strongest appeal which could be made was that we should follow the court; that the court had adjudicated the liability; whereas under the very act it had no such question referred to it, nor did the court pretend to do it.

Mr. GALLINGER. But, if the Senator from Kansas will permit me——

Mr. BRISTOW. Certainly.

Mr. GALLINGER. The Senator from Arkansas will not lose sight of the fact that in deciding many of these cases the court did specifically state that in the opinion of the court the amount that was due to the citizen——

Mr. CLARKE of Arkansas. But the court did something it had no right to do and therefore it is not binding. The act is not binding upon either Congress or the claimant. It was a voluntary affair, made without any authority to do it.

Mr. GALLINGER. If the Senator from Kansas will bear with me a moment, I will read the concluding paragraph of the opinion of the court in the case of the schooner *Sally*, which was delivered by Justice John Davis, a distinguished jurist. He says:

> The court further decides, as conclusion of law, that said seizure and condemnation of the ship were illegal, and the owner had a valid claim for indemnity therefor upon the French Government prior to the ratification of the convention between the United States and the French Republic, concluded September 30, 1800; that said claim was relinquished to France by the Government of the United States by said treaty in part consideration of the relinquishment of certain national claims of France against the United States, and that the claimant is entitled to the following sum from the United States.

Mr. CLARKE of Arkansas. Judge Davis is entitled to very high respect and has received it from the entire bar of the country, but he had no authority to include that last statement.

Mr. GALLINGER. That is exactly what the court said.

Mr. CLARKE of Arkansas. It is exactly what Congress said the court should not say.

Mr. GALLINGER. The court did say it.

Mr. CLARKE of Arkansas. Then they did it outside of the law and outside of their authority.

Mr. BRISTOW. Now, Mr. President——

Mr. CUMMINS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Kansas yield to the Senator from Iowa?

Mr. BRISTOW. I do.

Mr. CUMMINS. This is the same ship mentioned by the Senator from Kansas a day or two ago that sailed from Gibraltar?

Mr. BRISTOW. Yes; the *Venus*.

Mr. CUMMINS. It always seemed to me a little remarkable that they should call an armed ship by that name. But passing that, is it true that when she left Gibraltar her only cargo consisted of $31,000 of specie and about $500 worth of silk stockings?

Mr. BRISTOW. It is.

Mr. CUMMINS. Is it true that the specie belonged, with the exception of $1,000, to the owners of the ship?

Mr. BRISTOW. It is.

Mr. CUMMINS. Is it true that in the award made by the Court of Claims there is an allowance of $4,100 for freight charges for carrying this money from the port of Gibraltar to the port of Batavia, in the island of Java?

Mr. BRISTOW. It is. The amount is $4,144, to be accurate.

Mr. CUMMINS. I should like to ask the Senator from South Dakota whether, under such a finding, he believes that the Senate ought to give any great heed to the conclusions of the Court of Claims with respect to such an item as that? I am not now speaking of any other.

Mr. CRAWFORD. I will say to the Senator from Iowa that I have never been willing to accept the mere syllabi at the head of an opinion, which may have been prepared by the reporter, as conclusive evidence of all that was held and all of the merits of the case in regard to which the opinion was written; and I am not willing to merely accept a few state-

ments of that kind made by the Senator from Kansas, whom I know to be absolutely sincere from his standpoint, as a sufficient basis for discrediting the solemn conclusion reached by the Court of Claims.

Mr. CUMMINS. I entirely concur in the statement just made by the Senator from South Dakota. I do not want to disparage or discredit the judgment of the Court of Claims, but when such an item as I have just mentioned is included in a finding, and the Congress of the United States is asked to pay it, it seems to me that our own good common sense should be applied to it; and when so applied, as I look at it, the result is inevitable. It is simply impossible to conceive that a freight charge made against the owners of a ship itself for carrying $31,000 of their own money from Gibraltar to Java should be allowed. That is inconceivable to me, and it is not within any decision of the Supreme Court of the United States or any other decision on the face of the earth.

I do not now say that the court has not decided that, under certain circumstances, freight charges might be allowed, but the Senator from South Dakota knows that there must have been very great defect in the testimony that could have permitted the Court of Claims to reach any such result as that. I for one would hesitate a long time before I would vote to take $4,100 out the Treasury of the United States upon the hypothesis that that was a fair, reasonable, decent freight charge for carrying the property or the money of the owners themselves between those two ports. It seems to me that there ought to be a correction somewhere along the line of these items, especially when, in the same account, there is stated a charge of something like $3,100 as insurance——

Mr. BRISTOW. Thirty-five hundred dollars.

Mr. CUMMINS. Thirty-five hundred dollars as insurance for the safe carriage of this same money, or rather if not the safe carriage of the money its safe-keeping. Those are the objections I have to such a bill as this.

Mr. CRAWFORD. As the Senator was addressing his remarks to me——

Mr. GALLINGER. Mr. President, I should like to make a correction.

The PRESIDING OFFICER. Does the Senator from Kansas yield to the Senator from South Dakota?

Mr. BRISTOW. I will be a little more generous than the Senator from South Dakota. I yield to him at any time for any general remarks he sees fit to make.

Mr. CRAWFORD. That would carry the reflection that I was not generous with the Senator from Kansas, and I think I was. But we will pass that.

It seems to me that aside from this particular case the statement by the Senator from Iowa is too broad. I do not believe that it is a sound rule to say that because I own my own team and am employing it in service and it happens to be my own team that that service is no longer a subject of consideration where it may be an issue involved in the loss; nor do I believe it follows that because I have paid $3,000 insurance on a piece of property and it is money paid out in contemplation of a trip of my ship to the Cape of Good Hope, and before it reaches Hatteras it is attacked by an enemy and absolutely destroyed, that I should be barred from recoupment for the amount of $3,000 I have paid as insurance covering the entire trip. Now, I state that without reference to this particular case. I think the Senator's statement is too broad.

Mr. GALLINGER. Will the Senator permit me to make a correction?

Mr. BRISTOW. In just a moment. I want to make a statement relating to a statement made by the Senator from South Dakota as to the syllabus and the statement of the Senator from Kansas in regard to this case.

I desire to state that the facts I gave the Senator from Iowa are taken from the report of the committee and not from the syllabus, but from the decisions of the court, and they are not statements of mine except as read here from the record.

Mr. GALLINGER. I regret that through an inadvertence I have prolonged this discussion. I suggested that the opinion of Justice Davis was in the case of the ship *Sally*. I failed to perceive as I was turning the leaves over that it was in the case of the schooner *John* and not the ship *Sally* that Justice Davis in announcing his opinion of the court used the language I quoted a moment ago. I think that ought to be stated in justice to the court as well as myself.

Mr. BRISTOW. I think the schooner *John* was found in company with the *Venus* at one time and they were both taken.

Now, the motion is to recommit the bill with instructions to take out the payments that have been made for insurance and premium on insurance, first, because the insurance companies insured these vessels and the cargo against just exactly such dangers as they incurred and it was so stipulated in their policies, and because of these unusual risks they charged percentages running from 10 to 33⅓ per cent on both vessel and cargo. Now, charging these exorbitant rates, of course there were losses and they paid the losses, but they fixed the rate with a view of the losses, and why should the Government let them keep the premium and it pay all the losses that occurred? They were insuring against these losses by privateers. It seems to me utterly unjust, and I do not see how the Senator from South Dakota, with his keen and sensitive conscience, can put the stamp of his approval upon such legislation.

Then again, if the men are in commerce who own these ships, and they undertake to carry on this commerce in spite of the dangers with which it is threatened, they fix their charges to cover the possible loss that they may incur in landing the goods at the point of destination, and why should they have the premiums on their insurance returned to them when they have been paid the loss they incurred and the contract has been fully carried out by the insurance companies? They were paid by the shippers their prices for transporting the cargo, and the excessive insurance charges were certainly taken into consideration in fixing these charges. So I move that the bill be recommitted, with instructions to the committee to take out such items as relate to insurance and premiums.

Mr. BURTON. Mr. President, the question before the Senate at present, as stated by the Senator from Kansas [Mr. BRISTOW], relates not to the general merit of the so-called French spoliation claims, but rather to the premiums and insurance. I have always voted against these claims, first, because I have thought they were of very doubtful validity in their inception; and, in the second place, because at the time when they were fresh in the public mind they were rejected by Congress, even though, as in the second administration of Jefferson and in the administration of Jackson, there was an abundance of money to pay all just demands against the Government. Indeed, in the time of Jackson the surplus in the Treasury was so great that it was divided among the States.

It seems to me that in this discussion and in some of the reports in favor of these claims there has been a radical misconception of the duty of a country to its citizens in a case like this, where claims exist by reason of injuries inflicted by a foreign government or its citizens.

The mere fact that the citizens of France captured American sailing vessels, appropriated them to their use, condemned them in courts, or otherwise deprived American citizens of their ownership, does not create a claim against the United States, even though a treaty was concluded after an effort had been made by our Government to collect indemnity for those depredations. I want to read very briefly from the works of John Quincy Adams on this subject:

> A government does not by abandoning the claim of one of its citizens against a foreign government necessarily become liable to make good the claim. "The argument of abstract right is strong, but as the justice obtainable from foreign nations is at all times and under every state of things very imperfect, and as the only alternative in cases of denial of justice is the abandonment of the claim or war, a nation by abandoning the claim after exhausting every specific expedient for obtaining justice neither partakes of the injustice done nor makes itself responsible to the sufferer; for war, even if it eventually obtains justice for that sufferer, secures it by the sufferings of thousands of others equally unmerited and which must ultimately remain unindemnified. And mere inability to obtain justice can not incur the obligation it is unable to enforce."

The above quotation is from Moore's Digest of International Law, volume 6, page 1026.

It may be argued on behalf of these claims that there was a recognition of them by reason of a counter demand of France against the United States because of the violation of the treaty of 1778, as well as of the United States against France because of depredations on our commerce. But even so, that does not create anything more than a moral claim of more or less doubtful validity. To assert the obligation to collect any amounts claimed on account of these depredations would be to declare that it was the duty of the United States to continue in a state of war—for the condition that existed was certainly one of limited or partial war. That would mean that millions of treasure must be expended and many lives lost merely to enforce the rights of private citizens. In a word, it would be placing the welfare and interest of the individual citizen above the public welfare and the interest of the nation. It thus happens, for this reason, and from the very beginning, that these claims have not been regarded as legal or even equitable, but at best as moral or political.

The decision of the Court of Claims on this subject is distinct in the case of Buchanan *v.* United States (24 C. Cls., pp. 74–81).

The decisions in these spoliation cases are not judgments which judicially fix the rights of any person. That is not even claimed by the court itself. It is hardly necessary to read the

explicit declaration of the statute to the effect that the decision of the court should not determine the rights of the claimants or create any obligation on the part of the United States, for the court itself found that—

> The obligations of the Government are so far moral and political that they can not be gauged by the fixed rules of municipal law for the measures of legal damages.

The Supreme Court of the United States, in commenting on this subject, says:

> Notwithstanding repeated attempts at legislation, acts in two instances being defeated by the interposition of a veto—

This decision was in the year 1895, the year preceding the veto by President Cleveland—

> no bill had become a law during more than 80 years which recognized an obligation to indemnify, arising from the treaty of 1800, and the history of the controversy shows that there was a difference of opinion as to the effect of that treaty. (2 Whart. Int. Law, 248, p. 714; Davis, J., Gray v. United States, supra.) Under the act of January 20, 1885, the claims were allowed to be brought before the Court of Claims, but that court was not permitted to go to judgment. The legislative department reserved the final determination in regard to them to itself, and carefully guarded against any committal of the United States to their payment; and by the act of March 3, 1891, payment was only to be made according to the proviso. We think that payments thus prescribed to be made were purposely brought within the category of payments by way of gratuity, payments as of grace and not of right.

The question before us is whether there is any moral obligation to pay alleged claims arising 110 years ago.

I am perfectly willing to concede a sort of sentimental disposition in favor of these claims. They are regarded as a badge of distinguished lineage in some portions of the country, similar to descent from the Pilgrims of the *Mayflower* or membership in the Society of Colonial Dames. There are whole communities in which a considerable share of the citizens have some part in the prosecution of these demands against the Government. It is entirely probable that whole families have abated their efforts and energies in the expectation that a fortune would sometime come to them from the payment of these so-called claims. But I think it will be found to be without precedent, not only in the history of our own Government, but in the history of others as well, that a payment of this nature should be made 110 years after the original claim arose, when whatever payments are made must go to the descendants more or less remote of those who were the original possessors of the property that was lost. To that must be added the very obvious fact that at this late day it is extremely difficult to do justice, even if the claims were originally valid.

Now, coming to the difference between insurance and premiums, on the one hand, and the other claims in this bill, there is a much stronger ground for objection to the payment of the former than to the payment of actual losses from the capture and condemnation of the vessels or cargo. At the risk of repetition of what has already been referred to, I will read briefly what President Cleveland said on that subject in his veto message of June 6, 1896. He says:

> In the long list of beneficiaries who are provided for in the bill now before me on account of these claims, 152 represent the owners of ships and their cargoes and 186 those who lost as insurers of such vessels or cargoes.
>
> These insurers by the terms of their policies undertook and agreed "to bear and take upon themselves all risks and perils of the sea, men-of-war, fire, enemies, rovers, thieves, jettison, letters of mart and countermart, surprisals, takings at sea, arrests, restraints, and detainments of all kings, princes, or people of what nation, condition, or quality whatsoever."
>
> The premiums received on these policies were large, and the losses were precisely those within the contemplation of the insurers. It is well known that the business of insurance is entered upon with the expectation that the premiums received will pay all losses and yield a profit to the insurance in addition; and yet, without any showing that the business did not result in a profit to these insurance claimants, it is proposed that the Government shall indemnify them against the precise risks they undertook, notwithstanding the fact that the money appropriated is not to be paid except "by way of gratuity—payments as of grace and not of right."

Turning next to the case of premiums, if they are to be paid by the Government to those who originally paid them, it means that those who owned these captured boats are placed in a better position than they would have enjoyed if their adventure had been successful and the voyage uninterrupted, for in that case they would not have recovered the premiums.

Although the premium was paid by the owner of the boat and cargo, it was naturally included by him in his charge for freight. Yet the Court of Claims, in effect, says we will indemnify him not only for his freight, but for the premium, which would never have been repaid to him under any circumstances.

Then as to insurance. According to one estimate the rates of premium charged averaged from 6 per cent to 30 per cent. It is very likely after counting all losses that those who received these very high rates of premium were realizing a very substantial profit from the business. It is not like the ordinary cases of insurance where premium rates are comparatively small. The amounts received were suited to the conditions existing at the time. If there was partial war, if there was danger from privateers or from seizure of any kind, the insurance premiums were squared with the risks which prevailed. There is very little equity after the expiration of more than 100 years in indemnifying those who received such large rates. In this day there would certainly be an agitation for the examination of the books of those corporations to find out whether or not they made a profit before anything of that kind would be considered. The committee has recognized the lack of equity in the claim for premiums and insurance by excluding from the bill the insurance companies and including only individual underwriters, although so far as any principle of payment is concerned there is no possible distinction between the two. The Court of Claims provided for both alike.

A great deal of emphasis has been laid upon the fact that, beginning with the Fifty-first Congress, payments have been made upon these claims. In all cases where provision has been made for French spoliations, it has been by incorporating them in deficiency or other appropriation bills, so that when they have been presented to the President, if he vetoed these, he must veto many deserving items. I recall very distinctly, and some others who are now here will recall, the vote in the House of Representatives in the early morning of the 4th of March, 1891. The question had been discussed for less than an hour after a wearisome all-night session. Let me call attention to the fact that the member of the Committee on Appropriations, Mr. McComas, who favored these claims, less than 60 seconds before the vote was taken, said this:

> The insurance claims, I understand, have been stricken out of the amendment of the Senate. Let us vote to concur with the Senate.

The vote was 99 to 80. Among those 80 who voted against the validity of the claims were six Members who are now Senators of this body—Messrs. BANKHEAD, BURTON, CARTER, LA FOLLETTE, PAYNTER, and SHIVELY.

There is one other name in this list of persons who voted against these claims. That is the name of McKinley, who, whatever he may have done in the way of approving them when President, voted against them as a Member of Congress when the deficiency appropriation bill was under consideration. This amendment was proposed in 1891.

Whatever equity there may be in favor of the general claims, Mr. President, I maintain there is no equity in favor of these claims now under consideration, and the motion of the Senator from Kansas [Mr. BRISTOW] should prevail.

Mr. GALLINGER. Mr. President, I had not intended to occupy a moment in the discussion of this question, but there are two or three points that I feel constrained to allude to very briefly. First, the Senator from Kansas [Mr. BRISTOW] called upon the Senators from New Hampshire to come to the defense of the only President which New Hampshire had furnished the country, suggesting that he had been assailed. I have not assailed the memory of President Pierce, and I do not propose to do so; but I will suggest to the Senator from Kansas that President Pierce's record, so far as vetoes are concerned, will hardly bear careful investigation, and it is well to remember that this particular veto of President Pierce did not receive the assent of a majority of the body to which it was sent.

It will be recalled, as I suggested on yesterday, that every bill that passed the Congress during the incumbency of President Pierce that proposed to improve the rivers and harbors of the United States met with a prompt veto on his part. It is also true that Congress overthrew the vetoes, and that those appropriations became law, notwithstanding the presidential disapproval.

I am not familiar with the grounds upon which President Polk vetoed a bill similar to this, not having read the veto message. So far as President Cleveland's veto is concerned, it will be remembered that he vetoed a great many bills, taking particular delight in vetoing bills that gave $12 a month to certain soldiers and the widows of soldiers of the Civil War—indeed, hundreds of such bills were vetoed by him.

I recall the fact in connection with President Cleveland's veto of the so-called French spoliation claims—and I think I am accurate in this, although I have not referred to it very recently—that he suggested to Congress in his veto message that it would take twenty-five millions of money out of the Treasury if those claims were recognized, and yet it is a fact that the Court of Claims, after a careful examination and in an exhaustive report, has stated to the country that $6,000,000 will be the maximum amount that the country will be called upon to pay should these claims be allowed. So that even President

Cleveland was at variance with the court, as he was at variance with the Congress of the United States, a large majority of the body to which the veto message was sent voting against it.

Mr. President, over fifty favorable reports have been made on these claims, and it is idle to undertake to differentiate and say that the claims that are in this bill are different from the claims that have been heretofore allowed. The reports have been almost invariably in favor of the proposition that this Government was bound in equity and honor to pay these obligations which it had voluntarily assumed when the arrangement was made with France, and when France gave us the benefit of certain claims that she had against this country. Those reports were made by very distinguished men. I find that John Holmes, a man of distinction, made one; Edward Everett made three; Edward Livingston made three; Daniel Webster reported once in favor of them; Caleb Cushing reported three times; Rufus Choate three times; Truman Smith four times; Hannibal Hamlin once; and Charles Sumner once.

It seems to me, Mr. President, that those great men, men who stood at the head of the bar of the United States, men like Choate, Webster, Cushing, and Livingston, could not have been mistaken as to the justice of these claims when they solemnly reported to Congress that, after careful inquiry and investigation, the claims were just and right. Chief Justice Marshall is also on record as having given his assent to the validity of these claims, and multitudes of other great public men might be cited in support of the contention that some of us are making to-day. I might also cite several voluminous reports made by Members of the Senate since I have been privileged to serve in this body.

It has been said over and over again in this debate—the Senator from Kansas [Mr. BRISTOW] has repeated it and reiterated it, and rolled it under his tongue as a sweet morsel—that no attention had been paid to these claims until they had become 50 or more years old; and that they had become stale long before any effort was made to collect them.

Mr. BRISTOW. Mr. President——

The VICE PRESIDENT. Does the Senator from New Hampshire yield to the Senator from Kansas?

Mr. GALLINGER. I yield to the Senator.

Mr. BRISTOW. Will the Senator permit a question?

Mr. GALLINGER. Certainly; with pleasure.

Mr. BRISTOW. As I remember, the Senator from Kansas did not say that no attention was paid to them, but that no favorable action had been taken by the Congress composed of men who were personally familiar with the incidents.

Mr. GALLINGER. Well, Mr. President, possibly I did misstate the attitude of the Senator from Kansas in that respect; and if so, I am glad to be corrected; but I want to call attention to a fact which is quite as important as the contention of the Senator from Kansas, which is that immediately after the ratification of the convention of 1800 memorials were sent to Congress from citizens of Maine, Massachusetts, New Hampshire, Connecticut, New York, Pennsylvania, Virginia, Maryland, North Carolina, and South Carolina, praying that Congress would take cognizance of these claims and fulfill what the citizens of those States understood to be its obligation when it entered into that arrangement with France. These memorials were not pigeonholed. It will be remembered that this was early after the circumstances which gave rise to this contention originated. The memorials were not pigeonholed, but they were sent to a committee of very distinguished men. That committee consisted of Messrs. Giles, Eustis, Mitchell, Lowndes, Milledge, Tallmadge, Wilson, Davis, and Gregg, names that some of us recall as having figured very largely in the early history of the legislative department of our Government. That committee, after very exhaustive examination, made a report, and I want to read the conclusions they reached away back in 1802, when the report was made. They said:

> Provision ought to be made by law to indemnify the citizens of the United States, who, in carrying on a lawful trade to foreign ports, suffered losses by the seizure of their property, made by unauthorized French cruisers, or by any French cruisers, without sufficient cause, in violation of the rights of American commerce, during the late war between Great Britain and the French Republic, and whose claims for indemnity against the said Republic were renounced by the United States by their acceptance of the ratification of the treaty lately made with France.

That was the opinion of those distinguished gentlemen representing the legislative department of the Government in the year 1802, when the matter was fresh before the people and the Congress of the United States. If Congress failed to make provision to pay these claims, it does not, Mr. President, by any means prove that the claims are not just and right, and that they ought not to be paid, for we all know that the Congress of the United States has not always treated its citizens with that consideration, so far as claims against the Government are concerned, that the citizen is entitled to. Recurring to this early history—and I am only going to give two or three citations, though I might give a hundred of them—and we find the following extract from a letter written by Mr. Jefferson in 1793 at the instance of President Washington:

> I have it in charge from the President to assure the merchants of the United States concerned in commerce or navigation that due attention will be paid to any injuries they may suffer on the high seas or in foreign countries contrary to the law of nations and existing treaties, and that on forwarding hither well-authenticated evidence of the same, proceedings will be adopted for their relief.

Mr. BRISTOW. Mr. President——

The VICE PRESIDENT. Does the Senator from New Hampshire yield to the Senator from Kansas?

Mr. GALLINGER. I yield to the Senator.

Mr. BRISTOW. It is true that was the attitude of Mr. Jefferson and that proceedings were begun for the relief of those citizens, and that Mr. Jefferson during his entire administration pressed upon France the payment of claims that he felt were just and due American citizens as against France. There is no controversy between the Senator from New Hampshire and any of us in regard to that point. That was done, and many of the claims that Mr. Jefferson advanced were afterwards recognized by France and paid. But these claims were not recognized as just, nor were they paid.

Mr. GALLINGER. The Senator is right in saying that some of these claims have been paid. But where does the Senator get authority for saying that these claims are not just as valid as the claims that have been allowed? And why should France have paid them when our Government relieved France of the obligation to do so? Where does the Senator get his authority?

Mr. BRISTOW. I get it from the reports of committees, from the veto messages of the Presidents, and from the literature of the time.

Mr. GALLINGER. Mr. President, the Senator puts the opinions of two or three committees against the opinions of 50. He puts the opinions of three Presidents against the opinions of a great many other Presidents. Mr. Jefferson and Mr. Pickering persistently pressed upon France the claims of our citizens for redress, and France never undertook to repudiate those claims.

As I recall the matter, the French plenipotentiaries did not dispute or deny their justice, and finally an arrangement was made whereby France exempted us from obligations she could have imposed upon us, and we in return took these French spoliation claims upon ourselves, just as we recently took the Spanish War claims from the shoulders of Spain and paid such of them as we thought were just and right.

I find that away back in 1802 our minister at Paris, writing to the French secretary of state, urged the justice and validity of these claims, and in those days their validity was never questioned, so far as I can ascertain.

We had, Mr. President, another committee of very distinguished men who looked into this matter in the early days of the Republic, in the year 1806. That committee consisted—and I want to call the attention of the Senator from Kansas to this—of these distinguished gentlemen: Messrs. Marion, Eppes, Clinton, Tallmadge, Cubbs, Dickson, Blunt, Findley, and Tenny, and that committee, distinguished as it was, its members being recognized among the leaders in the Congress of the United States, said:

> From a mature consideration of the subject, and from the best judgment your committee have been able to form of the case, they are of opinion that this Government, by expunging the second article of our convention with France, of the 30th of September, 1800, became bound to indemnify the memorialists for their just claims, which they otherwise would rightfully have had on the Government of France.

Mark the language of this committee when it says "their just claims." They did not agree with the Senator from Kansas that these claims are without merit, but, on the contrary, they declared them to be "just" claims. So that we have very distinguished authority, coming down to us from the early days of the Republic, when these claims were fresh in the minds of our public men, for saying that those who gave these claims careful and unprejudiced examination reported in favor of their payment; and they ought to have been paid long ago.

I will not detain the Senate, Mr. President, further than to say that after years of controversy raging in Congress and out of Congress, after these claims had been passed upon by the two branches of the legislative body and declared to be just and right, though vetoed, it is true, by three Presidents during this long and interminable contention, Congress, in its wisdom, in 1885 said: "Let us refer this whole matter to the Court of Claims for examination and report," and we did that. I remember voting on that question myself in another body, and the

claims were so referred. In sending them to the court we had a report from a committee and that committee said:

In the opinion of the committee the ends of justice alike demand a settlement of this vexed question, where it can be dispassionately heard and impartially considered.

We carefully guarded the law that we passed in various particulars, and among other things Congress provided:

The court shall examine and determine the validity and amount of all claims: *Provided*, That * * * they shall decide upon the validity of said claims according to the rules of law, municipal and international, and the treaties of the United States applicable to the same, and shall report all such conclusions of fact and law as in their judgment may affect the liability of the United States therefor.

And to guard it as far as possible in the interests of the United States the law provided:

The Attorney General of the United States * * * shall resist all claims presented under this act by all proper legal defenses.

Mr. President, I submit, having passed a law taking out of Congress these claims that were consuming time and resulting in controversies, having calmly and dispassionately sent them to the court for examination and report upon questions of fact and law, and that court having solemnly declared that every one of the claims in dispute is a just claim, it is not, it occurs to me, the privilege of the Congress at this late day to undertake to reverse the opinion of that court and refuse longer to pay them. In my judgment, the claims are as just as any that have ever been presented to Congress for adjudication and payment. The claims are old, it is true, but that fact should not be used as an argument against them, but rather as a reason why an international obligation, assumed by our Government more than a hundred years ago, should be honorably fulfilled.

Mr. CRAWFORD. Mr. President, just a word with reference to the statement made by the Senator from Ohio [Mr. BURTON] as to the right to recover insurance. That question seems to be settled by decisions rendered, not by the Court of Claims, but by the Supreme Court of the United States, and the citations from the Supreme Court of the United States are made in the decision of the Court of Claims. I call attention to the case of William R. Hooper, administrator, against the United States and others, and the schooner *John*, 22 Court of Claims, page 408. In the opinion of the court in that case upon the subject of insurance, the court says:

The able arguments and briefs of counsel for claimants on these questions have been listened to and examined with great care. Whatever difficulty we might find were the matter here presented for the first time is removed by the precedents established by the Supreme Court. In the *Anna Maria* (2 Wharton, 325)—

I think that should be Wheaton—

the court allowed "the value of the vessel and the prime cost of the cargo with all charges, and the premium of insurance, where it has been paid, with interest." In Malley *v.* Shattuck (2 Cranch, 458) the court said (citing *Charming Betsey*):

"In pursuance of that rule the rejection of the premium for insurance, that premium not having been paid, is approved; but the rejection of the claim for outfits of the vessel and the necessary advance to the crew is disapproved. Although the general terms used in the case of the *Charming Betsey* would seem to exclude this item from the account, yet the particular question was not under the consideration of the court, and it is conceived to stand on the same principle with the premium of the insurance, if actually paid, which was expressly allowed."

That is quoted from the Supreme Court of the United States.

Mr. BURTON. Mr. President, the Senator from South Dakota [Mr. CRAWFORD] perhaps did not hear all of my argument. It is unnecessary to enter into a discussion of what the question may be in a case of legal rights, but this is confessedly not a legal claim, but a moral claim, where we must decide the question of the justice and propriety of an allowance on more general grounds. I will concede that in such a case as the Alabama claims, where the contention was that punitive damages should be paid—although that was practically rejected—there might very properly be included premiums paid for insurance, insurance money, and other items for which there could be no possible foundation here.

SIUSLAW RIVER IMPROVEMENT.

Mr. KEAN. I ask the Senator from New Hampshire [Mr. BURNHAM] if he desires to go on further with his bill to-night?

Mr. BURNHAM. It is getting rather late, and perhaps an executive session is desired.

Mr. KEAN. I move that the Senate proceed to the consideration of executive business.

Mr. BOURNE. I hope the Senator will withhold his motion for a moment.

Mr. KEAN. Very well.

Mr. BOURNE. I ask unanimous consent to present a report (No. 933) from the Committee on Commerce. I am directed by the Committee on Commerce, to which was referred the joint resolution (S. J. Res. 126) amending the act of June 25, 1910, making appropriation for the improvement of the Siuslaw River, Oreg., to report it without amendment. I ask unanimous consent for the present consideration of the joint resolution. I will state for the information of the Senate that it is simply to clear up an ambiguity that existed in the last river and harbor bill. It makes no appropriation.

The VICE PRESIDENT. The Senator from Oregon asks unanimous consent for the present consideration of the joint resolution named by him, which will be read for the information of the Senate.

The Secretary read the joint resolution, as follows:

Resolved, etc., That the provision of the river and harbor act approved June 25, 1910, making appropriation for improving Siuslaw River, Oreg., be amended so as to read as follows:

"Improving Siuslaw River, Oreg., at the mouth, in accordance with the project set forth in the report submitted in House Document No. 648, Sixty-first Congress, second session, $50,000: *Provided*, That the Secretary of War may enter into a contract or contracts for such material and work as may be necessary to complete said project and to maintain the same for one year during construction, to be paid for as appropriations may from time to time be made by law, not to exceed in the aggregate $165,500, exclusive of the amount herein appropriated: *Provided further*, That before beginning said work or making said contract or contracts the Secretary of War shall be satisfied, by deposit or otherwise, that the port of Siuslaw or other agency shall provide for the accomplishment of said project the additional sum of $215,500, which said sum shall be expended by the Secretary of War in the prosecution of said work and for its maintenance in the same manner and in equal amount as the sum herein appropriated and authorized to be appropriated from the Treasury of the United States: *And provided further*, That the port of Siuslaw may proceed with the construction of the south jetty in pursuance of the contract with Robert Wakefield, entered into December 24, 1909, to the full extent of said contract; and the amount to be furnished by the said port of Siuslaw, or other agency, as aforesaid, may be reduced by such amounts, not exceeding $100,000, as may be expended under said contract, provided all the work so done shall be in accord with the project herein adopted and satisfactory to the Secretary of War."

The VICE PRESIDENT. Is there objection to the present consideration of the joint resolution?

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the joint resolution.

The joint resolution was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

EXECUTIVE SESSION.

Mr. KEAN. I renew my motion that the Senate proceed to the consideration of executive business.

The motion was agreed to, and the Senate proceeded to the consideration of executive business. After 15 minutes spent in executive session the doors were reopened, and (at 4 o'clock and 45 minutes p. m.) the Senate adjourned until to-morrow, Saturday, December 17, 1910, at 12 o'clock m.

NOMINATIONS.

Executive nominations received by the Senate December 16, 1910.

TO BE CONSULS GENERAL.

W. Stanley Hollis, of Massachusetts, now consul at Dundee, to be consul general of the United States of America at Beirut, Turkey, vice Gabriel Bie Ravndal, nominated to be consul general at Constantinople.

Gabriel Bie Ravndal, of South Dakota, now consul general at Beirut, to be consul general of the United States of America at Constantinople, Turkey, vice Edward H. Ozman, deceased.

TO BE CONSULS.

Edwin S. Cunningham, of Tennessee, now consul at Durban, to be consul of the United States of America at Bombay, India, vice E. Haldeman Dennison, nominated to be consul at Dundee.

E. Haldeman Dennison, of Ohio, now consul at Bombay, to be consul of the United States of America at Dundee, Scotland, vice W. Stanley Hollis, nominated to be consul general at Beirut.

Nathaniel B. Stewart, of Georgia, now consul at Madras, to be consul of the United States of America at Durban, Natal, vice Edwin S. Cunningham, nominated to be consul at Bombay.

REVENUE-CUTTER SERVICE.

Capt. Francis Marion Dunwoody to be senior captain in the Revenue-Cutter Service of the United States, to rank as such from November 10, 1910, in place of Senior Capt. Frank Hamilton Newcomb, retired. Mr. Dunwoody is now serving under a temporary commission issued during the recess of the Senate.

PROMOTIONS IN THE ARMY.

CAVALRY ARM.

Second Lieut. Talbot Smith, Eighth Cavalry, to be first lieutenant from December 13, 1910, vice First Lieut. Albert J. Woude, Sixth Cavalry, who died December 12, 1910.

INFANTRY ARM.

First Lieut. William S. Mapes, Twenty-fifth Infantry, to be captain from December 14, 1910, vice Capt. John J. O'Connell,

Twenty-eighth Infantry, dropped for desertion December 13, 1910.

APPOINTMENT IN THE ARMY.

Robert Skelton, of Pennsylvania, to be first lieutenant, Medical Reserve Corps, from December 14, 1910.

POSTMASTER.

William A. Devine to be postmaster at Madison, Wis., in place of Elisha W. Keyes, deceased.

CONFIRMATIONS.

Executive nominations confirmed by the Senate December 16, 1910.

THIRD SECRETARY OF EMBASSY.

Frank D. Arnold to be third secretary of the embassy at Mexico, Mexico.

SECOND SECRETARY OF LEGATION.

Percival Heintzleman to be second secretary of the legation at Peking, China.

PROMOTIONS IN THE ARMY.

INSPECTOR GENERAL'S DEPARTMENT.

Brig. Gen. Ernest A. Garlington to be inspector general, with the rank of brigadier general.

GENERAL OFFICER.

Col. Montgomery M. Macomb to be brigadier general.

QUARTERMASTER'S DEPARTMENT.

Lieut. Col. Frederick G. Hodgson to be assistant quartermaster general, with the rank of colonel.

Lieut. Col. John B. Bellinger to be assistant quartermaster general, with the rank of colonel.

Maj. John E. Baxter to be deputy quartermaster general, with the rank of lieutenant colonel.

Maj. Moses G. Zalinski to be deputy quartermaster general, with the rank of lieutenant colonel.

Capt. William S. Scott to be quartermaster, with the rank of major.

Capt. Robert H. Rolfe to be quartermaster with the rank of major.

CORPS OF ENGINEERS.

Second Lieut. Roger G. Alexander to be first lieutenant.

ORDNANCE DEPARTMENT.

Lieut. Col. Charles H. Clark to be colonel.
Maj. George W. Burr to be lieutenant colonel.

CAVALRY ARM.

To be lieutenant colonel.

Maj. Robert D. Read to be lieutenant colonel.

To be majors.

Capt. James A. Cole to be major.
Capt. De Rosey C. Cabell to be major.

To be captains.

First Lieut. Dorsey Cullen to be captain.
First Lieut. Charles H. Boice to be captain.
First Lieut. Daniel H. Gienty to be captain.

To be first lieutenants.

Second Lieut. Walter H. Rodney to be first lieutenant.
Second Lieut. Francis A. Ruggles to be first lieutenant.
Second Lieut. Henry T. Bull to be first lieutenant.
Second Lieut. Howard R. Smalley to be first lieutenant.
Second Lieut. Moss L. Love to be first lieutenant.

FIELD ARTILLERY ARM.

To be colonel.

Lieut. Col. Charles W. Foster to be colonel.

To be lieutenant colonel.

Maj. George W. Van Deusen to be lieutenant colonel.

To be major.

Capt. William S. McNair to be major.

To be captain.

First Lieut. William S. Browning to be captain.

COAST ARTILLERY CORPS.

To be colonel.

Lieut. Col. Charles G. Woodward to be colonel.

To be lieutenant colonel.

Maj. Thomas Ridgway to be lieutenant colonel.

To be majors.

Capt. George H. McManus to be major.
Capt. Edward J. Timberlake to be major.
Capt. William P. Pence to be major.

To be captains.

First Lieut. Arthur L. Keesling to be captain.
First Lieut. Francis J. Behr to be captain.
First Lieut. John R. Musgrave to be captain.
First Lieut. Hartman L. Butler to be captain.
First Lieut. William H. Peek to be captain.
First Lieut. James E. Wilson to be captain.

To be first lieutenants.

Second Lieut. Louis D. Pepin to be first lieutenant.
Second Lieut. Rufus F. Maddux to be first lieutenant.
Second Lieut. Herbert A. McCune to be first lieutenant.
Second Lieut. Lincoln B. Chambers to be first lieutenant.
Second Lieut. Willis C. Knight to be first lieutenant.
Second Lieut. John R. Ellis to be first lieutenant.
Second Lieut. John Mather to be first lieutenant.
Second Lieut. Chester R. Snow to be first lieutenant.
Second Lieut. Robert E. M. Goolrick to be first lieutenant.

INFANTRY ARM.

To be lieutenant colonels.

Maj. William L. Buck to be lieutenant colonel.
Maj. Edward H. Plummer to be lieutenant colonel.

To be majors.

Capt. Samuel Seay to be major.
Capt. James T. Dean to be major.

To be captains.

First Lieut. Harris Pendleton, jr., to be captain.
First Lieut. William G. Fleischhauer to be captain.
First Lieut. Albert W. Foreman to be captain.
First Lieut. Ernest Van D. Murphy to be captain.
First Lieut. Joseph H. Griffiths to be captain.
First Lieut. Hilden Olin to be captain.
First Lieut. Frederick Goedecke to be captain.
First Lieut. James J. Mayes to be captain.

To be first lieutenants.

Second Lieut. Fred W. Pitts to be first lieutenant.
Second Lieut. James B. Nalle to be first lieutenant.
Second Lieut. William F. Robinson, jr., to be first lieutenant.
Second Lieut. John J. Burleigh to be first lieutenant.
Second Lieut. Manuel M. Garrett to be first lieutenant.
Second Lieut. Augustine A. Hofmann to be first lieutenant.
Second Lieut. Henry S. Brinkerhoff, jr., to be first lieutenant.
Second Lieut. James Blyth to be first lieutenant.
Second Lieut. Frank C. McCune to be first lieutenant.
Second Lieut. Edwin Gunner to be first lieutenant.
Second Lieut. Resolve P. Palmer to be first lieutenant.
Second Lieut. Edward E. McCammon to be first lieutenant.
Second Lieut. Philip Remington to be first lieutenant.

APPOINTMENTS IN THE ARMY.

CAVALRY ARM.

Sergt. Claud Killian Rhinehardt to be second lieutenant.

FIELD ARTILLERY ARM.

Corpl. John Russell Lynch to be second lieutenant.

COAST ARTILLERY CORPS.

Sergt. Frederick Ramon Garcin to be second lieutenant.
Pvt. Ralph Waldo Wilson to be second lieutenant.

INFANTRY ARM.

Cadet David Owen Byars to be second lieutenant.
Corpl. James Allan Stevens to be second lieutenant.
Sergt. Emmert Wohlleben Savage to be second lieutenant.
Corpl. Sim Leopold Feist to be second lieutenant.
Corpl. Tolbert Frank Hardin to be second lieutenant.
Sergt. Leon Moffat Logan to be second lieutenant.
Sergt. Horace Greeley Ball to be second lieutenant.

MEDICAL CORPS.

Llewellyn Powell Williamson to be first lieutenant.

MEDICAL RESERVE CORPS.

Thomas Paul Doole to be first lieutenant.
George Burt Lake to be first lieutenant.
James Homer Wilson to be first lieutenant.
Dillis Sidney Conner to be first lieutenant.
Lazelle Brantly Sturdevant to be first lieutenant.
John Stanley Coulter to be first lieutenant.

George Howard Hungerford to be first lieutenant.
Frank Nifong Chilton to be first lieutenant.
Alleyne von Schrader to be first lieutenant.
John Mitchell Willis to be first lieutenant.
Harry Garfield Ford to be first lieutenant.
Albert Patton Clark to be first lieutenant.
Carl Ahrendt Scherer to be first lieutenant.
Joseph Linton Siner to be first lieutenant.
James Franklin Johnston to be first lieutenant.
William Denton to be first lieutenant.
Charles Evans McBrayer to be first lieutenant.
Samuel Smith Creighton to be first lieutenant.
Lauren Samuel Eckels to be first lieutenant.
Edgar D. Craft to be first lieutenant.
Kerwin Weidman Kinard to be first lieutenant.
Fred Rexford Burnside to be first lieutenant.
William Thatcher Cade, jr., to be first lieutenant.
George Graham Divins to be first lieutenant.
Lloyd Ambrose Kefauver to be first lieutenant.
Gordon Brooks Underwood to be first lieutenant.
Faris Morell Blair to be first lieutenant.
George Emory Pariseau to be first lieutenant.
Francis Xavier Strong to be first lieutenant.
Henry Poindexter Carter to be first lieutenant.
Robert Henry Gantt to be first lieutenant.
William Armistead Gills to be first lieutenant.
Henry Allison Ingalls to be first lieutenant.

CHAPLAIN.

Rev. Henry Lester Durrant to be chaplain with the rank of first lieutenant.

CAVALRY ARM.

Everett Collins to be second lieutenant.

FIELD ARTILLERY ARM.

Bernard Robertson Peyton to be second lieutenant.

COAST ARTILLERY CORPS.

Edgar Bergman Colladay to be second lieutenant.
George Donald Riley to be second lieutenant.
Douglas Campbell Cordiner to be second lieutenant.
Julian Sommerville Hatcher to be second lieutenant.
Fred Mortimer Green to be second lieutenant.
Delmar Samuel Lenzner to be second lieutenant.
Oliver Loving Spiller to be second lieutenant.
Ruskin Peirce Hall to be second lieutenant.
Austin McCarthy McDonnell to be second lieutenant.
Roland Wilbur Pinger to be second lieutenant.
Donald Armstrong to be second lieutenant.
Franklin Babcock to be second lieutenant.
Hermann Heinrich Zornig to be second lieutenant.
Gladeon Marcus Barnes to be second lieutenant.
Earl James Wilson Ragsdale to be second lieutenant.
Raycroft Walsh to be second lieutenant.
Harvey Clark Allen to be second lieutenant.
Edward Bennett Dennis to be second lieutenant.
Roger Baldwin Colton to be second lieutenant.

INFANTRY ARM.

Whitmon Robert Conolly to be second lieutenant.
Frank Anderson Sloan to be second lieutenant.
Russell Peter Hartle to be second lieutenant.
Oswald Hurtt Saunders to be second lieutenant.
Spencer Ball Akin to be second lieutenant.
Robert Gibson Sherrard to be second lieutenant.

PORTO RICO REGIMENT OF INFANTRY.

Enrique Urrutia, jr., to be second lieutenant.
Arturo Moreno Calderon to be second lieutenant.
Carlos Manuel Lopez to be second lieutenant.
Rafael Bird to be second lieutenant.

PROMOTIONS IN THE NAVY.

Midshipman Timothy J. Keleher to be an ensign.

Passed Asst. Paymaster Frank T. Watrous to be a paymaster.

Asst. Paymaster John J. Luchsinger to be a passed assistant paymaster.

Asst. Paymaster Joseph E. McDonald to be a passed assistant paymaster.

Asst. Paymaster Everett G. Morsell to be a passed assistant paymaster.

APPOINTMENTS IN THE NAVY.

The following-named citizens to be assistant paymasters:
Smith Hempstone,
Harry W. Rusk, jr., and
Harold C. Gwynne.

POSTMASTERS.

ALABAMA.

William T. Hogan, Phoenix.

GEORGIA.

William J. Evans, Stillmore.
James J. Gordy, Richland.
George A. Poche, Washington.

ILLINOIS.

Fred R. Brill, Hampshire.
Jessie Roush, Lena.

KANSAS.

Curt M. Higley, Cawker City.
Joseph McCreary, Coffeyville.
Harry C. Smith, Hill City.

MICHIGAN.

C. Guy Perry, Lowell.
Edwin A. Smith, Wayne.
Clara Spore, Rockford.

MINNESOTA.

Anton O. Lea, New Richland.

MISSOURI.

George N. Gromer, Pattonsburg.
Andrew J. Siebert, Ste. Genevieve.

NEW JERSEY.

William B. Goodenough, Farmingdale.

NEW YORK.

Warren D. Burtis, Woodmere.
B. S. Preston, Roxbury.
Samuel L. Riley, Bronxville.
Homer E. Snyder, Victor.
Amelia L. Tyler, Hurleyville.

NORTH DAKOTA.

Gladys Thompson, Kensal.

PENNSYLVANIA.

Charles B. Boyd, Mars.
Samuel M. Turk, Parkers Landing.

SOUTH CAROLINA.

Frederic Minshall, Abbeville.

TEXAS.

Charles W. Atkins, Stamford.
Robert T. Bartley, Ladonia.
William P. Fleming, Georgetown.
Vidal Garcia, San Diego.
Mary K. Hartson, Kyle.
E. B. Hill, Saratoga.
William Hotmann, Fayetteville.
Herman Ingenhuett, Comfort.
Lulu F. McManis, Baird.
Lucius O'Bryan, San Benito.
D. P. Rowland, Clyde.
Charley E. Smith, Kerens.
Henry L. Somerville, Richmond.
W. M. Thompson, Gilmer.
Gomer S. Williams, Cisco.
Walter S. Yates, Forney.

HOUSE OF REPRESENTATIVES.

FRIDAY, *December 16, 1910.*

The House met at 12 o'clock noon.

Prayer by the Chaplain, Rev. Henry N. Couden, D. D.

The Journal of the proceedings of yesterday was read and approved.

BILLS ON PRIVATE CALENDAR.

Mr. PRINCE. Mr. Speaker, I ask unanimous consent that Friday, January 6, 1911, be substituted for to-day for the consideration of bills in order on the Private Calendar.

The SPEAKER. The gentleman from Illinois [Mr. PRINCE] asks unanimous consent that Friday, January 6, 1911, be substituted for to-day for consideration of bills on the Private Calendar in order to-day. Is there objection.

Mr. MANN. Mr. Speaker, reserving the right to object, I suppose my colleague's request would simply make that day

the same as to-day, with no greater right, and with the same program that would come up ordinarily to-day?

Mr. PRINCE. Yes, sir. That is the purpose of substituting one day for the other.

Mr. MANN. Just as though it were to-day?

Mr. PRINCE. Just the regular day. No greater right or no different right than I would have to-day.

The SPEAKER. Is there objection?

There was no objection.

URGENT DEFICIENCY BILL.

Mr. TAWNEY, from the Committee on Appropriations, reported the bill (H. R. 29495) making appropriations to supply urgent deficiencies in appropriations for the fiscal year ending June 30, 1911, and for other purposes, which was referred to the Committee of the Whole House on the State of the Union and, with the accompanying report (No. 1768), ordered to be printed.

Mr. MANN. Mr. Speaker, I reserve all points of order on the bill.

COMMITTEE TO ATTEND FUNERAL OF LATE REPRESENTATIVE COOK.

The SPEAKER. The Chair announces the following committee, appointed yesterday, to attend the funeral of the late Representative COOK and which was to be announced this morning.

The Clerk read as follows:

Hons. H. H. BINGHAM, JOHN DALZELL, GEORGE D. MCCREARY, R. O. MOON, THOMAS S. BUTLER, J. HAMPTON MOORE, ARTHUR L. BATES, D. F. LAFEAN, A. MITCHELL PALMER, J. N. LANGHAM, IRVING P. WANGER, and JOSEPH A. GOULDEN.

LEGISLATIVE, EXECUTIVE, AND JUDICIAL APPROPRIATION BILL.

Mr. GILLETT. Mr. Speaker, I move that the House resolve itself into Committee of the Whole House on the state of the Union for the consideration of the legislative, executive, and judicial appropriation bill (H. R. 29360); and pending that motion, Mr. Speaker, I would like to ask if I could come to some agreement with the gentleman from Georgia [Mr. LIVINGSTON], the leading member of the minority, as to the time for general debate. On this side of the House, in order to expedite business, they are ready to dispense with general debate.

Mr. LIVINGSTON. Mr. Speaker, I have one application for 30 minutes only.

Mr. GILLETT. Then, Mr. Speaker, I ask unanimous consent that general debate on this bill be limited to 30 minutes on each side, one-half of the time to be controlled by myself and one-half by the gentleman from Georgia [Mr. LIVINGSTON].

The SPEAKER. Pending the motion that the House resolve itself into Committee of the Whole House on the state of the Union, the gentleman from Massachusetts [Mr. GILLETT] asks unanimous consent that general debate be limited to one hour, 30 minutes on a side, one half to be controlled by the gentleman from Massachusetts [Mr. GILLETT] and the other by the gentleman from Georgia [Mr. LIVINGSTON]. Is there objection?

There was no objection.

The SPEAKER. The question is on the motion that the House resolve itself into Committee of the Whole House on the state of the Union for the consideration of the bill H. R. 29360, the legislative, executive, and judicial appropriation bill.

The motion was agreed to.

Accordingly the House resolved itself into a Committee of the Whole House on the state of the Union, with Mr. CURRIER in the chair.

The Clerk proceeded with the first reading of the bill.

Mr. GILLETT. Mr. Chairman, I ask unanimous consent that the first reading of the bill be dispensed with.

The CHAIRMAN. Is there objection?

There was no objection.

Mr. GILLETT. Now I will ask the gentleman from Georgia [Mr. LIVINGSTON] if he will use his 30 minutes, or as much of the time as he pleases?

Mr. LIVINGSTON. Mr. Chairman, I yield 30 minutes, or so much thereof as he may require, to the gentleman from New York [Mr. FITZGERALD].

Mr. FITZGERALD. Mr. Chairman, I wish to call attention to a statement that was recently issued from the Navy Department regarding the cost of building in a Government yard one of the battleships authorized in the naval appropriation act of the current fiscal year. The statement was made to the effect that the ship will cost $1,500,000 in excess of the limit of cost fixed by Congress. Well-informed persons in naval circles have been somewhat astonished at the statement which has been issued by the department; and if it were not for the seriousness of the situation it would be somewhat ridiculous.

It may be true, Mr. Chairman, that the cost of the battleship as planned and designed by the Navy Department will exceed the limit of cost fixed by Congress; but the ship authorized by Congress, and the only ship for which there is authority of law, can easily be built within the limits which the Congress fixed in the last appropriation act. I propose to show at this time, because the matter is now being presented to and discussed in the Committee on Naval Affairs, that the Navy Department, without authority of law, has planned and designed and has contracted for a ship of 7,000 tons greater displacement than the law authorizes.

Not only that, Mr. Chairman, but under the peculiar system of cost keeping now in vogue in the Navy Department, while many of the charges which are made against the cost of the ship make the apparent difference very largely in excess of what the cost should be, these charges are bookkeeping charges only, and do not exist in fact.

I have taken the trouble to set forth with some care the provisions of law covering this matter, and I shall put them in the RECORD at this time so that the Naval Committee may have the benefit of the compilation, and that the department may have an opportunity to explain its position if it be able to do so. The naval appropriation act for the fiscal year ending June 30, 1910, approved June 24, 1910, authorized the construction of two first-class battleships to cost, exclusive of armor and armament, not exceeding $6,000,000.

The law provides that the battleships, and I quote the language of the law, "shall be similar to the battleship authorized by the act making appropriations for the naval service for the fiscal year ending June 30, 1909."

In that act two battleships were authorized, the limit of cost of $6,000,000 as in the act just mentioned, and that law provided that these battleships should be "similar in all essential characteristics to the battleship authorized" in the naval appropriation act for the fiscal year ending June 30, 1908. That act was approved March 2, 1907. One battleship was authorized in it, with a limit of cost of $6,000,000, and the law declared it should be "similar in all essential characteristics and additional to the battleship authorized" in the appropriation act for the fiscal year 1907, the plans and specifications for which, the law declares, had already been prepared and submitted to Congress as required by law.

In the act of June 29, 1906, which was the act making appropriations for the fiscal year ending June 30, 1907, a battleship was authorized "carrying as heavy armor and as powerful armament as any known vessel of its class, to have the highest practicable speed and greatest practicable radius of action, to cost, exclusive of armor and armament, not exceeding $6,000,000;" and the law further provided that before proposals for this vessel should be issued the Secretary of the Navy should report to Congress, quoting the language of the act:

Full details covering the type of such battleship with the specifications for the same, including its displacement, draft, and dimensions, and the kind and extent of armor and armament therefor.

The battleship so authorized, Mr. Chairman, is known as the *Delaware*. Its displacement is 20,000 tons, speed 21 knots, and mean draft 26 feet 11 inches. In reply to an inquiry from Senator HALE, the Navy Department, under date of February 24, 1907, in compliance with the law requiring the plans of the battleship to be submitted to Congress for approval before proposals or bids for it could be issued, submitted the following information:

Five hundred and ten foot battleship No. 28.—Length on load water line, 510 feet; length over all, 518 feet 9 inches; beam molded on load water line, 84 feet 10¼ inches; beam over all, 85 feet 2⅝ inches; displacement trial, 20,000 tons; displacement, fully equipped and manned (everything on board, full), 22,075 tons; draft, mean (trial displacement), 27 feet; draft, mean, fully equipped and manned (everything on board, full), 29 feet 9 inches.

Armament, main battery: Ten 12-inch B. L. R., 45 calibers. Two submerged torpedo tubes.

The ten 12-inch B. L. R. are mounted in five electrically controlled turrets on the center line, placed as follows: Two forward above the forecastle deck, the second one firing over the top of the first; two aft on the main deck on the same level, and one amidships firing over the two after turrets.

The two torpedo tubes will be located forward below the water line.

Secondary battery: Fourteen 5-inch R. F. G., four 3-pounder saluting guns, four 1-pounder semiauto guns, two 3-inch fieldpieces, two machine guns, 30 calibers.

The 5-inch guns are located on the gun deck, forming two broadside batteries of seven guns each, the corner guns having head and stern fire, respectively. The smaller guns are located in commanding positions with large unobstructed arcs of fire.

The following year, on March 2, 1907, a battleship additional to the *Delaware* was authorized. That vessel was named the *North Dakota*, and its speed and displacement are the same as the *Delaware*. At this point I desire to call attention to the

statement of Rear Admiral Capps, found in Senate Document No. 628, Sixtieth Congress, second session, in which it appears that the plans for the *Delaware* were prepared by a special board for two different ships, one providing for a vessel of the length of 510 feet, 20,000 tons trial displacement, 21 knots speed, and some other details, while the other plan provided for a vessel 554 feet in length, 22,000 tons trial displacement, and 22 knots speed. It appeared that after careful consideration of these two plans the board unanimously agreed upon the vessel of 510 feet length, 20,000 tons displacement. Secretary Bonaparte commented upon the plans as follows:

In accordance with the proviso attached to the last naval appropriation bill, the plans for the battleship authorized by the said bill are, simultaneously with this report, transmitted to the Congress. These plans were selected by a board of officers, under the presidency of the Assistant Secretary, after a very careful consideration of various designs submitted by different naval constructors in the United States and one in England and by the board on construction of the department. The type of vessel selected has a length of 510 feet. In the language of the board: "It will carry as heavy armor and as powerful armament as any known vessel of its class; it will have a speed which is believed to be the highest practicable for a vessel of this type and class, in the present state of knowledge; it will have the highest practicable radius of action, and can be built within the limit of cost fixed by the act of Congress." This plan, therefore, complies in all respects, in the judgment of this highly competent board, with the terms of the authorization, and the department has no hesitation in approving the report of the board.

The *North Dakota* and the *Delaware* were the first ships authorized under these provisions, and they are of 20,000 tons trial displacement.

In the act of May 13, 1908, two battleships were authorized, "similar in all characteristics to the battleships" authorized in the act of March 3, 1907. That must have been a battleship of about 20,000 tons trial displacement. The two vessels so authorized were the *Florida* and *Utah*. They are of 21,825 tons displacement, with a speed of 20.75 knots and 28 feet 6 inches mean draft, practically the same, although somewhat larger and of a trifle less speed.

In the act of March 3, 1909, two battleships were authorized, to be "similar in all essential characteristics to the battleships" authorized by the act making appropriations for the naval service for the fiscal year ending June 30, 1908.

The ship then authorized, as already stated, was the *North Dakota*, of 20,000 tons trial displacement. The two ships so authorized, to be similar to the *North Dakota*, were named the *Arkansas* and *Wyoming*. The *Arkansas* and *Wyoming* are of 26,000 tons displacement, or 30 per cent greater displacement than the *North Dakota*, which was built upon the plans fixed by Congress, and to deviate from which there is no authority anywhere in the law.

No naval architect, Mr. Chairman, would assert for an instant that these ships, one of 20,000 tons displacement, the other of 26,000 tons displacement, were "similar in all essential characteristics." In any ship its gross displacement is a very important element; and, although the plans were submitted for the information and approval of Congress before any of these *Dreadnoughts* were authorized, the department, without authority, without any change in the law, simply upon its own initiative, has proceeded to build these vessels and expend money which was appropriated for ships of an entirely different type.

Mr. CAMPBELL. Do I understand the gentleman from New York to say that the architect varied the plans agreed upon by Congress?

Mr. FITZGERALD. I mean to say that Congress approved plans in 1907 for a ship of 20,000 tons trial displacement, and the law required them to submit full details, including the displacement. Since then the law has required every battleship authorized to be similar to the one authorized by that act, and I say that the department has not only built two ships under the act of 1908 of 26,000 tons displacement, but it has let a contract for a battleship, authorized in an appropriation act for the current fiscal year, of 27,000 tons displacement, and it now asserts that a similar ship can not be built in a Government yard within the limit of cost fixed in the law.

Mr. CAMPBELL. The plan for that particular battleship was not passed upon by Congress?

Mr. FITZGERALD. It was passed upon in this way: That the plans for the *North Dakota* and the *Delaware* have been passed upon, and Congress has required, year after year, that the battleships authorized be the same in all essential characteristics as the *Delaware;* and I assert that nobody with any knowledge whatever of a battleship or of a naval vessel or of a merchant vessel will dare assert that a ship of 30 per cent greater displacement is similar to a smaller ship.

Mr. DAWSON. Does the gentleman intend to convey the impression that Congress did not understand when it passed the current naval appropriation act that the new ships were to be of 26,000 tons displacement?

Mr. FITZGERALD. I am not talking about what Congress understood. That is something that the gentleman and myself would never agree upon, as to many things. I am talking about the law which controls the department, and if the gentleman can find anything in the law which authorized it to construct vessels of essentially greater displacement than the ships passed upon by Congress, and which the gentleman's committee took particular care should be carried in the law, in authorizing these new ships, I should like to have it pointed out.

Mr. DAWSON. I will say to the gentleman that it was thoroughly understood in the Committee on Naval Affairs—in fact, a separate vote was had—as to the size and displacement of the proposed new ships, and the committee agreed that the ships should be of 26,000 tons displacement, and in other respects conform in essential characteristics to the ships heretofore authorized.

Mr. FITZGERALD. It is very unfortunate that the committee did not take Congress into its confidence and put into the law what they had intended to do. I know what the committee actually did. I know what the law is. I know the provision was adopted upon the recommendation of the committee of which the gentleman is a member. I do not know what they may have done in secret. I know only what they offered in public.

I know what the law is, and I know that the department can not proceed upon the theory that what is done in secret conclave in the Naval Committee is a law to control its action.

Mr. DAWSON. May I ask the gentleman one question further? If his memory serves him he will recollect that during the debate on the naval appropriation bill it was made clear to the House what the new ships were to be.

Mr. FITZGERALD. Oh, Mr. Chairman, during the debate on the tariff bill it was made clear in the opinion of some gentlemen, who now regret their opinion, that the tariff act would have a certain effect on the country. The country did not agree with them. What took place in debate is not binding on anybody; what takes place in the gentleman's committee is not binding on anybody. No department has a right to consult the minutes of a committee as to its authority to proceed. I am pointing out the law and I assert that if the department had been more intent on knowing the law and upon living up to it instead of devoting its energies in attempting to control the action of Congress on many matters it would not have been put in the preposterous position of obtaining authority to construct a ship of 20,000 tons displacement and then contending that a ship of 27,000 tons of trial displacement is, in all essential characteristics, the same as, or is similar to, a 20,000-ton ship.

Mr. DAWSON. Will the gentleman permit me to call his attention to the fact, and he will recollect, that the appropriations for the new ships were larger than for the previous ships, and made larger because the ships were to be larger?

Mr. FITZGERALD. If the gentleman will permit me, there was no larger appropriation. There is no specific appropriation for any ships under construction. There is a lump appropriation which is apportioned as the work goes on. But I do know that the limit of cost for this 27,000-ton ship is identical with the limit of cost of the 20,000-ton ship. The gentleman may have overlooked that fact.

Mr. Chairman, before I was interrupted I was saying that the battleships authorized under the current appropriation act have been named the *New York* and the *Texas*. The law provides that they are to be—

similar to the battleships authorized in the act making appropriations for the naval service for the fiscal year ending June 30, 1909.

The battleships authorized in that act are the *Florida* and the *Utah*. They were to be similar to the *North Dakota* and the *Delaware*, but their displacement is 21,185 tons. Perhaps it could not be asserted that the *Florida* and *Utah* and the *Delaware* and *North Dakota* are in all essential characteristics similar, and that the variation was insignificant. No one will assert that the *Texas* and *New York*, which are planned, as my information is, to be of 27,000 tons displacement, are similar in all characteristics to the *Florida* and the *Utah*, because they are of 5,125 tons greater displacement.

Not only that; although the plans submitted for the *North Dakota* and the *Delaware* provided for 12-inch guns, the plans submitted for the *Texas* and *New York* provide for ten 14-inch guns.

Mr. COOPER of Wisconsin. Will the gentleman allow an interruption?

Mr. FITZGERALD. Certainly.

Mr. COOPER of Wisconsin. I notice that the gentleman uses the expression "similar in all essential characteristics." Is that a quotation?

Mr. FITZGERALD. Yes; in some acts it says "similar in all essential characteristics," in some "similar in all characteristics," and in the last act "similar to;" but the displacement is not such an insignificant characteristic of a ship that the dropping of the word "essential" would make any difference. The building of a ship essential in all characteristics to some other ship, or similar to another ship, would not authorize the department to undertake to increase its size to such an extent without some indication in the law that the change was made.

The limit of cost of these battleships, exclusive of armor and armament, is $6,000,000. So it need not be surprising that the cost of these ships will be greater than a ship of 20,000 tons displacement. I do not know, Mr. Chairman, where the Secretary of the Navy finds authority to make a contract for a 27,000-ton battleship. I do think that if the Committee on Expenditures in the Naval Department were to exercise their proper functions perhaps expenditures of this character would not be so carelessly made. The law fixes the size of these ships, and yet it must be that there is somebody under our system of government in this administration who is able to set himself above the law and above Congress and to regulate and determine the size of ships regardless of the action of Congress.

The Committee on Naval Affairs is at present, I understand, making some investigations in regard to the communications made by the Secretary of the Navy. I had a conference with the Secretary of the Navy recently, and I am expecting to obtain some information from him, but so that this statement may go out with statements that have been issued by the department I wish to state the facts as they are, so far as I have them.

The estimate for the construction of the *New York* at the navy yard is $7,500,000. I endeavored to ascertain what the overhead charges are that are included in that estimate. I expect to get the exact figures, but it was stated that, in round numbers, they were about $1,000,000. My information is that the statement has recently been made before the Naval Committee that the overhead charges are about 30 per cent, which would make them considerably in excess of $1,000,000. I asked the Chief Constructor how much of this $1,000,000 would be expended on the work being done in the yard, if the new ship were not constructed, and without investigation he hazarded the offhand information that at least $700,000 of the $1,000,000 would be expended, and the committee can easily understand why so much would be expended. Many of these overhead charges are merely bookkeeping charges against the ship. They have charged up the cost of repairs of buildings, the cost of maintaining the central power plant, the salaries of the naval officers in charge of the ships, and many other items, which I have not been able to obtain, all of which are paid from specific appropriations and which will be paid regardless of whether this ship is built or not.

The contract price for the *Texas*, the sister ship of the *New York*, is $5,900,000, and this is the sum which is taken as a basis of comparison, and yet, in answer to questions, although I could not get definite information, I was assured that, in addition to the $5,900,000, inspection charges and administrative charges necessitated by the building of this ship would not exceed $100,000. After I had some time to think over that statement I realized how important it was that they should not exceed $100,000, and what a safe "guess" it would be for the Naval Constructor to say under $100,000, because if these charges exceeded $100,000 it would bring the contract-built ship beyond the limit of cost of $6,000,000.

Mr. Chairman, instead of there being an apparent difference of $1,700,000 in the cost of these two ships, as the department has asserted, upon rough offhanded guessing, which of course is not figured in the interest of the Government yards, $800,000 of the $1,700,000 is at once eliminated.

Then there is another important matter to which no attention is given and about which the department says nothing. I am creditably informed by not one but a dozen naval constructors, and have been for years, that by the building of one of these ships in the Government yards the cost of repair work is reduced from 20 to 25 per cent. In the yard where this ship is to be built the repair work amounts to about between four and five million dollars. The saving in that alone more than wipes out the difference in the cost of these two ships. The Chief Naval Constructor, in his annual report, boasts of the fact that this country, instead of, as has been usually supposed, being slow in naval construction, can now rival any country on the face of the earth for the rapidity of naval construction, and he takes his figures from the year 1904. Yet he does not at all refer to the fact that the first of the modern ships built in Government yards was the *Connecticut*, authorized in 1902, and it and its sister ship built by contract were the first ships in the history of the Government that were ever built within the time fixed by law. Although the time for these ships has been from 36 to 42 months, the ships invariably were from 36 to 48 months overtime in construction.

All that is desired in the discussion of these questions is that all of the facts may be laid before Congress, that Congress may have full information to determine whether the policy of utilizing great plants which are costing for maintenance and overhead charges large sums of money, regardless of how much work is done, is good policy, and that that information be given to Congress so that we may honestly determine what is the best policy and may know exactly what the result of our efforts are in this class of work. I have submitted these observations because I did not feel that I could very well intrude myself on the Naval Committee during its deliberations, but I wish to place these facts in the RECORD, so that the committee and the department may have them while this investigation is going on, and that the committee may be able to answer fully questions along these lines when the naval bill is brought to the House for consideration. [Applause.]

Mr. Chairman, I yield back the balance of my time.

Mr. LIVINGSTON. Mr. Chairman, how much time is there remaining?

The CHAIRMAN. The gentleman has 30 seconds remaining.

Mr. ADAIR. Mr. Chairman, there is no subject before the House in which I feel a greater interest than that of pensions. The first day I occupied a seat in this body I introduced a bill to increase the pensions of Civil War soldiers, and have kept up a persistent effort for four years to secure the passage of such legislation. I believed then, as I do now, that we will never be able to pay the debt we owe to the men whose patriotic services made possible a united country. We should not forget that it was through their devotion to the flag, their fidelity, their bravery, and self-sacrifice that we now enjoy the many blessings that have been so bountifully showered upon us as a Nation.

Mr. Chairman, we of this generation, who are the beneficiaries of their loyalty and devotion, should see that the remaining years of their lives are made as happy and comfortable as possible. We should do this in order that we may show to the world that we are not an ungrateful people, but that we appreciate the gallant service they rendered. We should do this as an evidence of our gratitude and in remembrance of the hardships they endured and the sacrifices they made in behalf of liberty and justice and for the perpetuity of American institutions, and the establishment of true freedom and genuine liberty in the greatest and best Republic the world has ever known. I believed when I entered Congress four years ago that the time had come when every Union soldier who participated in that unfortunate struggle should be placed on the pension rolls at $1 a day. During the past four years nearly 150,000 have died, and the few remaining are now dying at the rate of 1 every 13 minutes, 113 each day—43,000, I am told, died last year, and many of these actually suffered for want of the comforts of life.

Mr. Chairman, for four years I have been knocking at the door of Congress, asking that these men be given a pension of $1 a day. Three years ago you said it was too soon after the passage of the McCumber Act to pass a general bill increasing their pensions, and then two years ago, when I insisted on the passage of a dollar-a-day bill, I was met with the argument that there was a deficit in the Government Treasury of nearly $100,000,000, and that we had no money to pay increased pensions. Notwithstanding the condition of the Treasury, you went ahead appropriating large sums of money for other purposes, much of which was unnecessary and absolutely thrown away. During the Sixtieth Congress you created nearly 15,000 new offices and fixed large salaries until the salaries of the new officers, together with the increases, amounted to nearly $30,000,000, and then you said to the old soldier, "You must wait until the Treasury is replenished."

One year ago I again urged the passage of my dollar-a-day bill, but you once more turned a deaf ear to the appeal of the old soldier and appropriated over a billion dollars for other purposes, but none to increase the pensions of the men who spent the best years of their lives in defending the flag. You have persistently refused to consolidate the 18 pension agencies, as is recommended by the Secretary of the Interior and the Commissioner of Pensions, and by so doing save annually over $400,000, which should be paid to the old soldiers in the way of increased pensions. The failure of Congress to enact legislation that will do justice to the survivors of the Civil War has been a great disappointment to me, but I have the satisfaction of knowing that I have been loyal and faithful to my soldier constituency and have made the best effort I could toward re-

warding them for the patriotic service they rendered in behalf of the Union.

Mr. Chairman, while I regret the committee has not seen fit to report the bill I introduced to pension soldiers at $1 a day, I am nevertheless glad that they have reported a bill based on age, which, if enacted into law, will distribute over $45,000,000 among worthy soldiers in addition to what they are now drawing. The bill I refer to is known as H. R. 29346, and reads as follows:

A bill (H. R. 29346) granting pensions to certain enlisted men, soldiers and officers, who served in the Civil War and the War with Mexico.

Be it enacted, etc., That any person who served 90 days or more in the military or naval service of the United States during the late Civil War, or 60 days in the War with Mexico, and who has been honorably discharged therefrom, and who has reached the age of 62 years or over, shall, upon making proof of such facts according to such rules and regulations as the Secretary of the Interior may provide, be placed upon the pension roll and be entitled to receive a pension as follows: In case such person has reached the age of 62 years, $15 per month; 65 years, $20 per month; 70 years, $25 per month; 75 years or over, $36 per month; and such pension shall commence from the date of the filing of the application in the Bureau of Pensions after the passage and approval of this act: *Provided*, That pensioners who are 62 years of age or over, and who are now receiving pensions under existing laws, or whose claims are pending in the Bureau of Pensions, may, by application to the Commissioner of Pensions, in such form as he may prescribe, receive the benefits of this act; and nothing herein contained shall prevent any pensioner or person entitled to a pension from prosecuting his claim and receiving a pension under any other general or special act: *Provided further*, That no person shall receive a pension under any other law at the same time or for the same period that he is receiving a pension under the provisions of this act: *And provided further*, That no person who is now receiving or shall hereafter receive a greater pension under any other general or special law than he would be entitled to receive under the provisions herein shall be pensionable under this act.

SEC. 2. That the benefits of this act shall include any person who served the period of time therein specified during the late Civil War or in the War with Mexico, and who is now or may hereafter become entitled to pension under the acts of June 27, 1890, February 15, 1895, and the joint resolutions of July 1, 1902, and June 28, 1906, or the acts of January 29, 1887, March 3, 1891, February 17, 1897, February 6, 1907, and March 4, 1907.

SEC. 3. That rank in the service shall not be considered in applications filed hereunder.

SEC. 4. That no pension attorney, claim agent, or other person shall be entitled to receive any compensation for services rendered in presenting any claim to the Bureau of Pensions or securing any pension

This bill, Mr. Chairman, provides a pension of $15 per month for all soldiers between the ages of 62 and 65; a pension of $20 per month for all soldiers between the ages of 65 and 70; a pension of $25 per month for all soldiers between the ages of 70 and 75; and a pension of $36 per month for all soldiers who have reached the age of 75 years or more. There are now on the pension rolls 93,589 Civil War soldiers between the ages of 62 and 65, whose pensions will be increased under this bill $36 per year, making a total increase to this number of $3,369,204. There are now on the rolls 184,577 Civil War soldiers between the ages of 65 and 70, whose pensions will be increased under this bill $96 per year, or a total increase of $17,719,392. There are now on the rolls 101,778 Civil War soldiers between the ages of 70 and 75, whose pensions will be increased, if this bill becomes a law, $120 per year, a total increase of $12,213,350. There are now on the rolls 63,461 Civil War soldiers who are between the ages of 75 and 108, whose pensions will be increased $192 per year, a total increase to this number of $12,187,512. It will be observed, therefore, that the total number of Civil War pensioners on the rolls at this time, exclusive of widows, minors, and dependent children, is 443,405, and the total increase under this bill to them amounts to $45,489,468. In addition to this there are 2,910 Mexican War soldiers, who, unless they are already on the rolls at a higher rate, will be benefited by this bill as follows: There are 27 on the rolls between the ages of 70 and 75, whose pensions will be increased $120 per year, making a total increase of $3,240; there are 2,883 Mexican War soldiers now on the rolls over the age of 75 years, whose pensions will be increased under this bill $192 per year, making a total of $553,536. Add to this the total increase to Civil War soldiers under the bill and you have a total increase to both Mexican and Civil War soldiers of $46,046,244. In view of the fact that some are already on the rolls at a higher rate than that fixed in this bill, the total increase may be a little less than the amount stated.

Now, Mr. Chairman, while I preferred the straight dollar-a-day bill to the one reported, I am nevertheless going to give this bill my hearty and enthusiastic support. As I have already shown, it will distribute over $45,000,000 among worthy soldiers, and this vast sum of money will add much to their comfort. While the bill, in my judgment, is not what it should be and not what I would have made it, yet I appreciate the fact that practically all legislation is the result of a compromise, and that a half loaf is better than none. In view of this fact, I shall vote for the bill, and in doing so I feel that the fight I have made during the past four years for more liberal pensions for the old soldiers has not been in vain. I sincerely hope this bill will pass, and then later on I will urge the passage of a dollar-a-day bill for the benefit of those who are on the rolls at a less rate.

Mr. GILLETT. Mr. Chairman, I will occupy but a very few minutes in giving to the House my views on this legislative, executive, and judicial appropriation bill. To me this appropriation bill is the most uninteresting and most unsatisfactory of all the appropriation bills. It deals almost exclusively, as the House is aware, with the salaries and contingent expenses of the different departments, questions which are not intrinsically of great interest, and it is unsatisfactory because in determining these salaries and funds we are obliged, of course, to take the statements of the officials who come before us. Now, in many departments the officials are enthusiastic and energetic. They can see great opportunities for new usefulness if the money at their disposal is increased. That, of course, is a commendable disposition, and yet, if we should allow the enthusiasm of all the well-meaning officials in the departments to have free rein, the Government would soon be in bankruptcy. It is necessary for the committee to decide where we shall restrict and where we shall be liberal, and we also find that in some of the departments there are officials whom we think do not exercise as close scrutiny and have as good and economical an organization as they ought to, and there we try to restrict their appropriation. The House will recognize that in all these cases we are obliged to take the statements of the officials who come before us. We can not go up into the departments and sit down and see just what is being done; and although from year to year we gradually form an opinion of their trustworthiness as the different heads come before us, and in our appropriations are influenced by that opinion, yet after all it is a great deal guesswork, and there is no principle or line by which we can hew and determine when an appropriation should be granted and when refused, so that this bill is obliged to be more or less a determination without complete knowledge as to just what each department should get. Therefore, I say it is always somewhat unsatisfactory.

Now, this pending bill has, I think, less in it to excite the interest or criticism of the House than any bill with which I have been connected, unless it was the bill of last year. There is certainly in the departments a spirit of economy which we have not noticed until last year. The Treasury Department particularly is bringing out new methods and suggests new organizations and new economies which are most gratifying. The House will remember that last year we gave to the Treasury Department, at their suggestion, an appropriation of $75,000 to be expended in employing experts to suggest to them new business methods in that department. We think that money has been admirably expended, and that it was a good investment. This year the Treasury Department itself—last year, you may remember, it cut down its expenses about $300,000—goes still further and cuts them down about $250,000 more, and that is the department where there is the greatest mark of improvement. Whether this is because that department was worse before and there is not so much room for reorganization in the other departments I can not say, but they certainly have evinced a wonderful zeal and efficiency in the reorganization in the department.

Mr. GOULDEN. Will the gentleman yield for a question?

Mr. GILLETT. Certainly.

Mr. GOULDEN. I have not had time to carefully read the report, as I have only received it this morning, but I notice you state on page 30 the net decrease in the number of salaries carried in this bill under appropriations for 1911 is 237. Can the gentleman tell us the number of increases in the bill now under consideration?

Mr. GILLETT. The number of increases of salary? I can not, but I should say as a mere guess it would be about 20.

Mr. GOULDEN. Twenty only?

Mr. GILLETT. Yes; I should think so, but that is a mere guess.

Mr. GOULDEN. Has the gentleman the amount of increases in the salaries proposed under this bill?

Mr. GILLETT. I should guess, probably—and, as I say, this must be only a guess—my recollection of them is it would be a $10,000 or $15,000 increase.

Mr. GOULDEN. I thank the gentleman for the information.

Mr. GILLETT. We have increased a few salaries. I do not think it is necessary to take up the time now to detail the changes, because as we come along and reach each case there will be ample time to explain it if the House so desires, and I do not think the entire matter is of such importance and interest that it requires me to take the time now in general debate to explain

when under the five-minute debate that will be sufficient, so unless some gentleman wishes to make an inquiry——

Mr. BARTHOLDT. I do not know whether or not I shall wish to take up this matter under the five-minute rule. If the chairman of the committee can make a satisfactory explanation now probably I shall content myself. I want to call the attention of the House to the fact that this bill abolishes the assay office at St. Louis, and I believe it also abolishes several other assay offices.

Mr. LIVINGSTON. One other—in North Carolina.

Mr. BARTHOLDT. My information is that at the assay office at St. Louis about $100,000 worth of business was done last year in actual assays, at an expense of $4,700. The assay office is located in a Federal building; they pay no rent, no special expense for fuel, and, as a result of that arrangement, this assay office has been maintained at a very small expense to the Government, and the benefits of it have been great to the people who do business with the office. I would like to ask the chairman of the committee whether, in his judgment, $100,000 worth of business, especially small business—these assays amount probably to $10 to $25 each, and for those $100,000 probably 10,000 assays will have to be made—could be done any more economically, either at a mint or anywhere else, than is done at the present time at St. Louis? If he can satisfy me on that point, and if I can also receive a satisfactory answer to my inquiry as to whether that amount of gold which is now offered by jewelers to these small assay offices would ever go into any mint at all, in that case I would not offer an amendment to the bill.

Mr. GILLETT. Mr. Chairman, I will say to the gentleman that I regret exceedingly, and I am sure the committee agrees with me, to take away from the gentleman's home an office which, of course, is somewhat a matter of pride to him. We all of us regret to have any office removed from our own districts, and I regret to take one away from such a distinguished gentleman as my friend from Missouri.

Mr. BARTHOLDT. I thank you.

Mr. GILLETT. But this was one of the economies which the Treasury Department, in its genuine zeal for reorganization and economy, pressed upon us. Now, the facts about St. Louis are as follows: As the gentleman states, they did nearly a million dollars worth of business—$723,000 worth. I am referring to the year 1910.

Mr. BARTHOLDT. If the gentleman will permit me, according to the statement of Mr. Andrew before your committee, the St. Louis assay office received $100,000 in deposits in the course of the year for assay purposes.

Mr. GILLETT. I have here the statement of Mr. Andrew, in which they received $723,000; but call it a million dollars. It makes no difference in the principle. It consisted of 38,900 ounces of gold. Now, what did that gold consist of? Of that 38,000 ounces, 16,000 ounces and a little over were United States coin which was brought there. That did not need to be brought to St. Louis. It could just as well have been deposited in a subtreasury anywhere. The reason why it was shipped to St. Louis from Cincinnati and near points was that if it had been sent on to Philadelphia the Government would have had to pay the freight. It was a little easier for the shippers to ship it to St. Louis and put the expense of getting it to the mint onto the Government than it was to send it to Philadelphia themselves. It made very little difference to them. It made a great difference to the Government.

Mr. BARTHOLDT. Has the gentleman any figures to show how many ounces of gold were offered that were not in the shape of coins?

Mr. GILLETT. I was going to say that of the 38,000 ounces, there were 19,000 ounces which were simply domestic bullion. Now, those were in bars of gold which were sent there from other refiners. They were deposited in St. Louis. They might have been deposited in any subtreasury just as well and been sent on. Now, 19,000 ounces consisted of domestic bullion, so that 35,000 ounces of the 38,000 were either of United States coin which was short weight, or else refined bars ready for minting. Now, neither of those, of course, needed to go to an assay office, so really the great bulk of it was sent there because, as I understand, the director worked for it. I do not blame him for it, but he was energetic, and he persuaded some of it to be sent there and, I suspect, from what I learned, in order to increase the business.

It is very proper to say that it is not of any advantage to the Government. There are 35,000 ounces out of the 38,000 ounces that could have been just as well sent anywhere else as to the St. Louis assay office. It was really of no advantage to the Government.

Mr. BARTHOLDT. That would leave about $100,000, of which I spoke, and the other $650,000 was gold upon which no assay was necessary. The $100,000, then, of which Mr. Andrew speaks, comprised small articles brought to that office for assaying by jewelers, and so forth; and, in my judgment, none of this would have found its way back to the Government Treasury but for the existence of that assay office, and there can be no doubt but that it is convenient to the people to have an assay office in the locality for assaying and purchasing their gold.

Mr. GILLETT. Yes; there were these 2,355 ounces of old jewelry, I agree with the gentleman, that would naturally go to the assay office; and that is really what the assay office does. It does not seem to me that an assay office ought to be kept up for the refining of 2,355 ounces of old jewelry.

Mr. BARTHOLDT. My contention is that if you had the assaying of the same amount anywhere else it would cost as much money.

Mr. GILLETT. I claim that it is not necessary to keep up a separate establishment for such a small amount of work.

Mr. BARTHOLDT. Well, Mr. Chairman, I do not wish to stand here every year and fight for the purpose of continuing that assay office. If the Treasury Department and its experts have come to the conclusion that the purposes of true reform will be subserved by abolishing that office at St. Louis, I am willing to give them a chance to demonstrate such to be the fact. For that reason I shall not offer an amendment to the bill to continue that office.

Mr. MANN. You are a true patriot.

The Clerk read as follows:

Office of Secretary: Secretary of the Senate, including compensation as disbursing officer of salaries of Senators and of the contingent fund of the Senate, $6,500; hire of horse and wagon for the Secretary's office, $420; assistant secretary, Henry M. Rose, $5,000; chief clerk, $3,250; financial clerk, $3,000, and $1,250 additional while the office is held by the present incumbent; minute and journal clerk, and enrolling clerk, at $3,000 each; principal clerk, executive clerk, and assistant financial clerk, at $2,750 each; reading clerk, librarian, chief bookkeeper, and clerk, compiling a history of revenue and general appropriation bills, at $2,500 each; compiler of Navy Yearbook and indexer for Senate public documents, Pitman Pulsifer, $3,500; keeper of stationery, $2,400; 4 clerks, at $2,220 each; 5 clerks, at $2,100 each; assistant librarian, $2,000; assistant librarian, $1,800; assistant librarian, $1,600; skilled laborer, $1,200; clerk, $1,800; clerk, $1,600; assistant keeper of stationery, $1,800; assistant in stationery room, $1,200; messenger, $1,440; assistant messenger, $1,200; 6 laborers, at $720 each; in all, $88,910.

Mr. MACON. Mr. Chairman, I make the point of order against the language used in lines 6 and 7, concluding in line 8, page 3:

Compiler of Navy Yearbook and indexer for Senate public documents, Pitman Pulsifer, $3,500.

That appears to be new language in an appropriation bill, and I would like to have an explanation of it, if it does not change existing law.

Mr. GILLETT. Although an apparently new provision, it is not. It was in the sundry civil bill of last year, and we have simply carried it from the sundry civil bill. It really belongs to this bill, as the gentleman will recognize.

Mr. MACON. Is the appropriation authorized by existing law?

Mr. GILLETT. It was authorized by the sundry civil appropriation bill; it was from the Senate.

Mr. MACON. It was simply carried in an appropriation bill?

Mr. GILLETT. The gentleman will recognize that many of these Senate and House appropriations have no foundation except in appropriation bills. This was intended as a permanent appropriation for the Senate, and they wish it again this year.

Mr. MACON. What is the importance of this office?

Mr. GILLETT. The gentleman could hardly expect me to judge of the importance of many of the Senate positions. We in the House generally allow the Senate to decide for itself what positions it needs, and put them in, and they give us the same privilege. We simply put it in because the Senate requested it.

Mr. MACON. I withdraw the point of order.

The Clerk read as follows:

Clerks and messengers to committees: Clerk of printing records, $2,220; assistant clerk, $1,440; messenger, $1,440; clerk to the Committee on Appropriations, $4,000; two assistant clerks, at $2,500 each; assistant clerk, $1,440; messenger, $1,440; clerk and stenographer to the Committee on Finance, $3,000; messenger, $1,440; clerk to the Committee on Claims, $2,500; assistant clerk, $2,000; assistant clerk, $1,440; messenger, $900; clerk to the Committee on Commerce, $2,500; assistant clerk, $1,800; messenger, $1,440; clerk to the Committee on Pensions, $2,500; assistant clerk, $1,800; 2 assistant clerks, at $1,440 each; messenger, $1,440; clerk to the Committee on the Judiciary, $2,500; assistant clerk, $1,800; messenger, $1,440; clerk to the Committee on Military Affairs, $2,500; assistant clerk, $2,220; assistant clerk, $1,440; messenger, $900; clerk to the Committee on Post Offices and Post Roads, $2,500; 3 assistant clerks, at $1,440 each; messenger, $1,440; clerk to the Committee on the District of Columbia, $2,500; assistant clerk, $1,800; messenger, $1,440; clerk to the Committee on Foreign Relations, $2,500; assistant clerk, $2,220; messenger, $1,440; clerk to the Committee on Engrossed Bills, $2,220; messenger, $1,440; clerk to the Joint Committee on the Library, $2,500;

messenger, $1,440; clerk to the Committee on Naval Affairs, $2,500; assistant clerk, $1,440; clerk to the Committee on Indian Affairs, $2,500; assistant clerk, $1,440; clerk to the Committee on Agriculture and Forestry, $2,500; assistant clerk, $1,440; messenger, $1,440; clerk to the Committee on Public Buildings and Grounds, $2,500; assistant clerk, $1,440; messenger, $1,440; clerk to the Committee on Public Lands, $2,500; assistant clerk, $1,440; clerk to the Committee to Audit and Control the Contingent Expenses of the Senate, $2,500; messenger, $1,440; clerk to the Committee on Interstate Commerce, $2,500; assistant clerk, $1,800; messenger, $1,440; clerks to the Committees on the Census, Education and Labor, Territories, Public Health and National Quarantine, Private Land Claims, Patents, Coast Defenses, Privileges and Elections, Additional Accommodations for the Library of Congress, Rules, Civil Service and Retrenchment, Enrolled Bills, Geological Survey, Railroads, Pacific Railroads, Pacific Islands and Porto Rico, Philippines, Cuban Relations, Interoceanic Canals, Transportation and Sale of Meat Products, Five Civilized Tribes of Indians, Mississippi River and its Tributaries, Expenditures in the Department of State, Manufactures, University of the United States, Canadian Relations, Transportation Routes to the Seaboard, Woman Suffrage, Mines and Mining, to Examine the Several Branches of the Civil Service, Revolutionary Claims, Immigration, Fisheries, Forest Reservations and the Protection of Game, Corporations Organized in the District of Columbia, Coast and Insular Survey, Irrigation and Reclamation of Arid Lands, Indian Depredations, Industrial Expositions, to Investigate Trespassers on Indian Lands, Standards, Weights, and Measures, Disposition of Useless Papers in Executive Departments, Expenditures in the Treasury Department, Expenditures in the War Department, Expenditures in the Department of Agriculture, Expenditures in the Interior Department, Expenditures in the Department of Justice, Expenditures in the Navy Department, Expenditures in the Post-Office Department, Conservation of National Resources, and clerk to the Conference Minority of the Senate, 51 in all, at $2,220 each; assistant clerks to the Committees on Private Land Claims, Rules, Pacific Islands and Porto Rico, Philippines, and Conference Minority of the Senate, 5 in all, at $1,800 each; assistant clerks to the Committees on Education and Labor, Territories, Public Health and National Quarantine, Coast Defenses, Privileges and Elections, Enrolled Bills, Cuban Relations, Interoceanic Canals, Manufactures, Immigration, and Fisheries, 11 in all, at $1,440 each; messengers to the Committees on the Census, Territories, Patents, Privileges and Elections, Additional Accommodations for the Library, Rules, Civil Service and Retrenchment, Geological Survey, Railroads, Pacific Railroads, Pacific Islands and Porto Rico, Philippines, Transportation and Sale of Meat Products, Five Civilized Tribes of Indians, Mississippi River and its Tributaries, Expenditures in the Department of State, Manufactures, University of the United States, Canadian Relations, Transportation Routes to the Seaboard, Woman Suffrage, Mines and Mining, to Examine the Several Branches of the Civil Service, Revolutionary Claims, Immigration, Fisheries, Forest Reservations and the Protection of Game, Corporations Organized in the District of Columbia, Coast and Insular Survey, Irrigation and Reclamation of Arid Lands, Indian Depredations, Industrial Expositions, to Investigate Trespassers on Indian Lands, Standards and Measures, Disposition of Useless Papers in Executive Departments, Expenditures in the Treasury Department, Expenditures in the War Department, Expenditures in the Department of Agriculture, Expenditures in the Interior Department, Expenditures in the Department of Justice, Expenditures in the Navy Department, Expenditures in the Post-Office Department, and Conservation of National Resources, 43 in all, at $1,440 each; in all, $315,420.

Mr. GILLETT. Mr. Chairman, I offer a formal amendment, inserting a word which was forgotten.

The Clerk read as follows:

Page 8, line 21, after the word "standards," insert the word "weights."

The question was taken, and the amendment was agreed to.

The Clerk read as follows:

Office of Sergeant at Arms and Doorkeeper: Sergeant at Arms and Doorkeeper, $6,500; horse and wagon for his use, $420, or so much thereof as may be necessary; clerk to Sergeant at Arms, $2,500; assistant doorkeeper, $2,592; acting assistant doorkeeper, $2,592; 3 messengers, acting as assistant doorkeepers, at $1,800 each; 48 messengers, at $1,440 each; 2 messengers on the floor of the Senate, at $2,000 each; clerk on Journal work for CONGRESSIONAL RECORD, to be selected by the official reporters, $2,000; storekeeper, $1,800; upholsterer and locksmith, $1,440; cabinetmaker, $1,200; 3 carpenters, at $1,080 each; janitor, $1,200; 4 skilled laborers, at $1,000 each; 2 skilled laborers, at $900 each; laborer in charge of private passage, $840; 3 female attendants in charge of ladies' retiring room, at $720 each; chief telephone operator, $1,200; 2 telephone operators, at $900 each; night telephone operator, $720; telephone page, $720; superintendent of press gallery, $1,600; assistant superintendent of press gallery, $1,200; 2 laborers, at $840 each; 30 laborers, at $720 each; 16 pages for the Senate Chamber, at the rate of $2.50 per day each during the session, $8,400; in all, $151,724.

Mr. MACON. Mr. Chairman, I make the point of order against the words "five hundred dollars," in line 11, page 9, it being an increase of salary to that extent.

The CHAIRMAN. The gentleman from Arkansas makes the point of order.

Mr. GILLETT. Mr. Chairman, I will explain to the gentleman that this was in the deficiency bill of the current year, for an additional amount paid the clerk, the Sergeant at Arms, $2,500 for the fiscal year, which was an addition of $500.

Mr. MACON. It has been carried in an appropriation bill in that form, which, of course, fixes the salary.

Mr. GILLETT. Which fixes the salary.

Mr. MACON. I withdraw the point of order.

The Clerk read as follows:

For the following for Senate Office Building under the Sergeant at Arms, namely: Stenographer in charge of furniture accounts and keeper of furniture records, $1,200; 5 messengers, at $1,440 each; attendant in charge of bathing rooms, $1,800; 2 attendants in bathing rooms, at $720 each; 3 attendants to women's toilet rooms, at $720 each; janitor for bathing rooms, $720; 3 messengers, acting as mail carriers, at $1,200 each; and messenger for service to the press correspondents, $900; in all, $14,700.

Mr. MACON. Mr. Chairman, I reserve a point of order on the item in line 21, page 10.

Attendant in charge of bathing rooms, $1,800.

That seems to be the creation of a new office.

Mr. GILLETT. Mr. Chairman, exactly the same explanation applies to that. It was in the same deficiency bill. It is on page 422 of the printed volume—

For attendant in charge of bathing rooms of the Senate Office Building, at the rate of $1,800 per annum.

Mr. MACON. It is carried in a previous appropriation bill.

Mr. GILLETT. Yes; not the legislative bill, but the deficiency bill. That is the reason it is new in this bill. It is transferred from the deficiency bill to this bill.

Mr. MACON. This is the bill I am investigating, and I have not the other before me, so will have to accept the gentleman's statement about the matter.

Mr. GILLETT. Exactly. We transferred it from the deficiency bill to this bill, where it obviously belongs.

Mr. MACON. With that explanation, Mr. Chairman, I take it that the point of order will not lie, and so I will withdraw it.

The CHAIRMAN. The point of order is withdrawn.

Mr. BARTLETT of Georgia. Mr. Chairman, do I understand the gentleman from Massachusetts to maintain that because an appropriation is carried in any previous appropriation bill, that makes it authorized by law? As I understand the rule of this House and the rulings which have been made upon it, the mere appropriation in previous appropriation bills will not make it law unless it is fixed by some statute or resolution. The mere fact that an appropriation is carried for an office or for any other purpose does not make it an appropriation authorized by law so as not to be thereafter subject to a point of order as not authorized by law.

Mr. GILLETT. Mr. Chairman, I do not think there is any organic law as to any of the employees of the Senate or of the House.

Mr. BARTLETT of Georgia. I think the gentleman is mistaken about that. Many of them are authorized by law.

Mr. GILLETT. At any rate the ruling has been that any employee of the Senate or of the House who has been carried in any previous appropriation bill is thereby part of the force of the two Houses, and the appropriation for the salary is in order on any subsequent appropriation bill.

Mr. BARTLETT of Georgia. Before even the clerks of the committees in this House can be provided for in an appropriation bill, the gentleman's committee ordinarily will not appropriate for a clerk to a committee or any other officer of this House unless authorized either by statute or by some resolution of the House, which is equivalent, being an authorization under the rules of the House. I am not disposed to make points of order against employees of the Senate. I think the salary paid in this instance is extravagant, and the Senate must take the responsibility of this kind of employment; and I could not remain silent and acquiesce in the proposition that the gentleman from Massachusetts made, and which seemed to be accepted by the gentleman from Arkansas, that whenever you reach an item of appropriation for an office or a salary carried in a previous appropriation bill or deficiency bill, that that makes it sacred against a point of order, on the ground that it is authorized by law.

Mr. GILLETT. The gentleman, it seems to me, does not distinguish between employees of the House and Senate and other employees of the Government.

Mr. BARTLETT of Georgia. Oh, yes; I do.

Mr. GILLETT. Because the gentleman says it has to be carried by a House resolution. Now, this was carried by the Senate. The Senate enacted it.

Mr. BARTLETT of Georgia. The Senate did not authorize it anywhere, except in an appropriation bill.

Mr. GILLETT. The Senate authorized it, and, therefore, why does not that place it on all fours with a House item authorized by the House?

Mr. BARTLETT of Georgia. The rule of the House is that any item in an appropriation bill is subject to a point of order when you can show that it is not authorized by existing law or is new legislation; and the mere fact that the Senate has, at a previous time or on a previous appropriation bill, provided for an office or for an expenditure does not change the rule; else all anyone would have to do would be to have the Senate incorporate as an amendment to an appropriation bill something desired to carry in the House, and then when it came back next year it could be appropriated for, and it would not be subject to a point of order.

Mr. GILLETT. That simply applies to Senate positions.

Mr. BARTLETT of Georgia. But these Senate positions must be authorized by law.

Mr. GILLETT. They are authorized by resolution of the Senate.

Mr. BARTLETT of Georgia. This does not appear to be authorized by resolution.

Mr. GILLETT. It was authorized by a vote of the Senate.

Mr. BARTLETT of Georgia. Oh, but that is different. It is authorized by a vote on an appropriation bill. I take it that it is not authorized by a resolution of the Senate, which is often done when they create new offices. The record is full now of such cases, but I, for one, will not acquiesce in a proposition that the Senate, by writing into an appropriation bill, can create a new office which forever becomes an office.

Mr. MANN. Will the gentleman yield for a question?

Mr. BARTLETT of Georgia. Certainly.

Mr. MANN. Except for the rulings which have been made by the Chair that a House resolution authorizing a position shall then have a position on an appropriation bill, the gentleman would not contend that a resolution passed by this House providing for an additional employee was law beyond the existence of that House itself?

Mr. BARTLETT of Georgia. No. I said under the ruling of the House it had been determined on an appropriation bill that a resolution authorizing the establishment of an office in this House was not subject to a point of order.

Mr. MANN. Although the House itself had expired by limitation of its term.

Mr. BARTLETT of Georgia. I did not say that.

Mr. MANN. That is the ruling, because you find all through reference to old resolutions passed in a prior Congress by the House of Representatives, not law, because this House can not by simple resolution enact a law which continues to be valid after the expiration of that Congress; and yet uniform rulings have been made by the Chair—strained, probably, to begin with, but now precedents—that where the House by resolution makes a provision for another employee of the House or an increase of salary for the employee, it is a warrant for continuing the appropriation and the item in an appropriation bill for that place. And the same ruling has gone to where the provision is made in an appropriation bill, because an appropriation bill which is a law is considered to have as much force as a simple resolution of the House which is not law and can not be law after the House has expired.

Mr. BARTLETT of Georgia. I think the gentleman is mistaken is his statement that rulings have been uniform that a mere carrying of a provision in an appropriation bill not authorized by law or by resolution prevents a point of order from being made against it.

Mr. MANN. There is no logic in the ruling, but there was the ruling and there has been practice and precedents, and they probably have worked to the extent of increasing the employees and their salaries.

Mr. BARTLETT of Georgia. It is very embarrassing to make a point of order to a proposition like this, and I would not have been heard at all except that I did not want to accept as a precedent the fact that the mere carrying in an appropriation bill of an item like this, which has never been authorized by law or by resolution of either House, was authority at law for continuing it in an appropriation bill. I do not believe that is good legislation.

Mr. MANN. It may not be good logic, but if the House passed a simple resolution creating a position, and that is in order on an appropriation bill, then if the Senate does the same thing that would be in order if the Senate, by simple resolution, can provide for a place.

Mr. BARTLETT of Georgia. If the gentleman will permit an interruption, these resolutions are always provided, both in the House and the Senate, to be paid out of the contingent fund until otherwise provided for by law. And the reason that the ruling was made that a simple resolution of the House providing for the creation of a new office at a salary to be paid out of the contingent fund was that the House had absolute control, under the statute, of the contingent fund and that it was not subject to a point of order.

Mr. MANN. I would not undertake to correct the gentleman about resolutions that come from his own committee, because I know that he is thoroughly informed about those matters as well as others; but I think, as a rule, the resolutions that come from the Committee on Accounts only provide that they are to be paid out of the contingent fund, without any regard as to how they shall be paid after that.

Mr. BARTLETT of Georgia. The gentleman is in error about that, for a great many have the provision "until otherwise provided for by law."

Mr. MANN. If the Senate, by some resolution, can make in order an item in an appropriation bill, certainly by enacting a law the two Houses can do it.

Mr. BARTLETT of Georgia. Certainly.

Mr. MANN. That is the logic of the situation, and I think that has been the ruling.

Mr. BARTLETT of Georgia. Mr. Chairman, I do not feel disposed to make the point of order. I reserved it merely to say what I have on the point of order. I therefore withdraw the point of order.

The CHAIRMAN. The point of order is withdrawn and the Clerk will read.

The Clerk read as follows:

Clerks to Senators: For 35 annual clerks to Senators who are not chairmen of committees, at $2,000 each, $70,000.

Mr. BARTLETT of Georgia. Mr. Chairman, I move to strike out the last word. I would like to ask the gentleman from Massachusetts a question. This provides for 35 annual clerks to Senators who are not chairmen of committees, at $2,000 each, in all $70,000. The clerks there provided for, as I understand it, are the same clerks that we call our secretary, who get $125 a month.

Mr. GILLETT. That is true.

Mr. BARTLETT of Georgia. In other words, the clerks to the Senators under this bill are provided for at a compensation of $2,000 a year to perform the same duties that the secretaries to Members perform for $1,500 a year.

Mr. GILLETT. That is a fact.

Mr. DAWSON. And if the gentleman from Georgia will permit me, I desire to say that I think the secretaries to Members of the House perform more onerous and responsible and detail duties than do the clerks to the Senators.

Mr. BARTLETT of Georgia. I did not speak as yet of the extent of the work, but I spoke of the character of it.

Mr. DAWSON. Yes.

Mr. BARTLETT of Georgia. I thoroughly agree with the gentleman, as he knows I do. Now, I would ask the gentleman, Did not the act creating the position, or authorizing the appropriation for clerks to Representatives—I think it was in 1891 or 1893——

Mr. GILLETT. It was later than that, I think.

Mr. BARTLETT of Georgia. Well, it was for the session in 1891 or 1893. In 1896 provision was made that it be annual at $100 a month, and then it was increased to $125 a month. Now, there could be no clerk either to a Senator or to a Member of the House of Representatives unless there was some law for it. When did this discrepancy in the amount paid to the clerks to Senators and to Representatives arise?

Mr. GILLETT. I think there has been a discrepancy from the beginning, but not as much as this. The gentleman is undoubtedly familiar with the fact that nearly all those holding positions under the Senate receive higher salaries for the same position than they do in the House.

Mr. BARTLETT of Georgia. Yes.

Mr. GILLETT. Elevator conductors, messengers, and so forth. The Senate pays more than the House does for the performance of what is supposed to be the same service.

Mr. BARTLETT of Georgia. Yes; but the gentleman must admit that there was no authority for Senators or Representatives to have a secretary or a clerk, either annually or by the session, until some 12 or 15 years ago.

Mr. GILLETT. I think it was about 1895.

Mr. BARTLETT of Georgia. I think the gentleman is correct about that. Then, surely, an act which received the approval of the House and the Senate did not provide that the clerk to a Representative should receive $1,500 or $1,200 and a clerk to a Senator $2,000. The point I am trying to get at is, when and how was this discrepancy created?

[The time of Mr. BARTLETT of Georgia having expired, by unanimous consent he was granted five minutes more.]

Mr. GILLETT. My recollection is this, that the first law allowed $6 a day.

Mr. LIVINGSTON. That was for the session.

Mr. GILLETT. Then they were put on a salary of $1,200 a year. Then the Senate, with the usual opinion that they should have more in that body, fixed the salary of their clerks at $1,500 a year. Then we raised ours to $1,500, and they raised theirs to $1,800, and last session they raised theirs to $2,000.

Mr. BARTLETT of Georgia. They did it on an appropriation bill.

Mr. GILLETT. I think it has been on an appropriation bill since the beginning—since the very first one.

Mr. BARTLETT of Georgia. No; there was an act passed authorizing this.

Mr. GILLETT. It is the only law now, and allows a Member $100 a month; everything else has been done by appropriation.

Mr. BARTLETT of Georgia. By resolution passed, if I recollect it—a concurrent or joint resolution. Anyhow, the point I wanted to emphasize was that these clerks to these Senators not only get $2,000 a year, but they are on the roll of the Senate, and they get what is usually termed in every Congress the extra month's pay.

Mr. GILLETT. Certainly.

Mr. BARTLETT of Georgia. Making it nearly $2,200.

Mr. GILLETT. Certainly; and the gentleman probably is aware that this question has been agitated to put our clerks on the roll.

Mr. BARTLETT of Georgia. And there is where they ought to go.

Mr. GILLETT. I agree with the gentleman; I think so, but the point of order was raised against it. I agree with the gentleman on that, and I think they ought to be on the roll.

Mr. BARTLETT of Georgia. I think clerks to Members ought to be upon the roll. I do not mean to say that Members should be stripped of their power or authority to designate a clerk and put him upon the roll and he should remain there regardless of the wishes of the Representative, but I do say the clerk should be designated by the Member, placed upon the roll, and should remain there as long as it is the wish and pleasure of the Representative for whom the work is performed, as long as he shall be his secretary. I understand that the reason there is objection made to this proposition to put clerks of the Members of the House upon the roll is that Members find it necessary to have more than one clerk. I am very willing to permit them to name one or as many as they see fit to do, but what ought to be done is that the money appropriated for this service ought to be paid by the disbursing officer to the clerk and not to be sent to the Member and then disbursed by him. I do not believe the statements I have seen in the newspapers, for statements have been made that Members sometimes, I will not say often, I trust no Member does it—but we have seen it frequently in the newspapers that Representatives employ clerks at $50 a month and pay them that and do not pay all the amount that is appropriated. I do not believe there is any such instance, but in order to prevent any such suggestion, in order to do what is proper *and right*, these clerks ought to go upon the roll of the House as employees of the House and be paid for their services, because it is not to the Representative that they render their service, but it is for the benefit of his constituents that they are appointed, and they ought to be paid like other employees of the Government, by the Government on the roll.

Mr. MACON. Will the gentleman yield?

Mr. BARTLETT of Georgia. Yes.

Mr. MACON. I want to ask the gentleman, What is the necessity for putting a clerk to a Representative on the roll?

Mr. BARTLETT of Georgia. Just as much a necessity as putting a clerk to a Senator on the roll, and they are on the roll.

Mr. MACON. I do not think that was necessary.

Mr. BARTLETT of Georgia. I think it is the proper thing to do.

Mr. GILLETT. May I make a suggestion to the gentleman? Why does not his committee, which is the proper committee, having such matters in charge, bring in such a resolution?

Mr. BARTLETT of Georgia. I think we will. We have done it, and we will do it again, if I can have my way about it.

Mr. DAWSON. Mr. Chairman, I move to strike out the last two words. First, I want to answer the interrogatory of the gentleman from Arkansas. It seems to me that a man who is provided by law to render a public service ought to be on the rolls of the Government; he ought to be on the pay roll. The clerk to a Member of the House of Representatives is performing the same character of service as a clerk to a committee, and there is as much reason why he should be on the roll as the clerk of any committee of the House or Senate. Now, Mr. Chairman, I have introduced into the House a bill and a resolution covering the point which the gentleman from Georgia has alluded to here. I have been convinced for many years that a serious injustice was being done by the present practice to one of the most efficient corps of Government employees that there is in the city of Washington.

Having served, myself, as a private secretary to a Member of this House, I am somewhat familiar with his duties. In my judgment, the success of a Member of this House in the eyes of his constituents at home depends as largely upon the efficiency of his private secretary as it does upon any other one thing.

Now, these private secretaries at the present time—and the same has been true for a number of years past—have not been either flesh, fish, nor fowl. They have not been even good red herring, so far as having a status is concerned. They are not recognized as employees of the Government at all. It has been customary for the newspapers to speak of this $1,500 allowance annually for clerk hire as a contingent fund for the Members of the House of Representatives.

These secretaries, and I repeat it, are among the most useful and most efficient young men in the Government service anywhere. Most of them are married men who come here from the districts represented by their respective Members. They are performing a service of unusual value, not only to the Members themselves but to the constituencies represented by those Members. It seems to me that this injustice ought not to be allowed to continue any longer, and I hope that before this session of Congress closes we will bring in for the consideration of the House either a bill or a resolution to put this corps of young men on a proper foundation, where they should have been many years ago.

Mr. SHERLEY. Will the gentleman yield?

Mr. DAWSON. Certainly.

Mr. SHERLEY. If I understand your remarks, you favor making them employees and putting them on the roll?

Mr. DAWSON. I favor putting them on the roll and giving them a status; yes, sir.

Mr. SHERLEY. What will be the effect of that so far as the control of a Member over his secretary is concerned?

Mr. DAWSON. Under the resolution I have drawn there will be no limitation as to the rights of a Member either in changing his secretary at any time or allowing him to designate two to perform the work if he chooses.

Mr. SHERLEY. How would it be possible, then, to have them on the rolls?

Mr. DAWSON. Why would it not be possible?

Mr. SHERLEY. The roll contemplates an employee who is employed at a given salary for a stated period.

Mr. DAWSON. Yes; but if provision is made for $1,500 or $1,800 per year, and it is specified in the law that there may be designated one or two persons up to that limit of salary, I see no reason why that would not be entirely possible and entirely practicable.

Mr. SHERLEY. And you could change the designation at any time?

Mr. DAWSON. Yes, sir.

Mr. SHERLEY. How are the payments to be made? On the designation of the Members?

Mr. DAWSON. The payments are to be made to the person whose name appears on the roll.

Mr. SHERLEY. Suppose you desire to change your secretary in the middle of a month, what then? How would the payment be made?

Mr. LIVINGSTON. Wait until the end of the month.

Mr. MANN. There is no difficulty as to that, I will say. Under the existing practice the chairman of a committee names the secretary of the committee, and can at any time designate a new secretary to take the place of a secretary which he has. It not only can be done, but it is sometimes done at the end of the month and sometimes in the middle of a month.

Mr. DAWSON. I do not think there are any difficulties that would in any way hamper the administration of such a resolution.

The CHAIRMAN. The time of the gentleman from Iowa [Mr. DAWSON] has expired.

Mr. SHERLEY. Mr. Chairman, I ask that the gentleman have five minutes more.

The CHAIRMAN. Is there objection?

There was no objection.

Mr. SHERLEY. What advantage is there for the clerk of a Member to go on the rolls unless it be to increase the salary?

Mr. DAWSON. There is a great deal of advantage.

Mr. SHERLEY. Well, what?

Mr. DAWSON. As I said before, these are self-respecting young men, and they have a right to appear as something in this governmental scheme of ours.

Mr. SHERLEY. The gentleman does not think titles make substance, does he?

Mr. DAWSON. No.

Mr. SHERLEY. "A man's a man for a' that."

Mr. DAWSON. But these are young men of character and self-respect, and rightfully entitled to go on the rolls of this House.

Mr. SHERLEY. They certainly do not lose anything in self-respect by being secretaries of Congressmen; I hope the gentleman does not have such a poor opinion of his colleagues as that.

Mr. DAWSON. Not at all. But they keenly feel the difference between being employed under a contingent fund and occupying an office where they rightfully belong. They should go on the annual roll, because they are annual employees.

Mr. SHERLEY. Now, is the object to give them a title, or is he looking toward an increase in salary?

Mr. DAWSON. I think they ought to have both.

Mr. SHERLEY. Now, the gentleman discusses a different proposition.

Mr. DAWSON. There is nothing concealed about this at all. They are entitled both to this status and entitled to be placed on a reasonable parity at least with the Senate. Now, may I ask the gentleman a question?

Mr. SHERLEY. Certainly.

Mr. DAWSON. Will the gentleman be kind enough to give the committee his reasons why this should not be done?

Mr. SHERLEY. I will tell you the reason why I believe they should not be put on the roll. The relationship of a secretary with a Member is a peculiarly confidential one, one that should be subject to the absolute control of a Member. I would not have any man as my secretary whom I might not dismiss at any moment, without being required to give the reason that actuated me. Now, if a man considers being simply my secretary is a position so lacking in dignity that he is not willing to serve without giving him some title, he is not the kind of man I want.

Mr. DAWSON. Will the gentleman permit me to ask him whether it is not a fact that every one of the heads of the departments and many of the heads of bureaus have private secretaries who occupy the same confidential relations as the private secretary of a Member of Congress, and whether he would be in favor of appropriating to the head of a department a lump sum from which he might fix the salary of his private secretary, or whether it would not be better business administration to specify the position and the amount in the law?

Mr. SHERLEY. I see no objection on earth, where we allow a private secretary to the head of a department and where the secretary assumes the same relation as he does to the Congressman, that the head of the department should have absolute control of that man.

Mr. DAWSON. Does not the gentleman admit that that would be very loose legislation, which would give opportunity for abuses of it?

Mr. SHERLEY. I think not. I have no objection to any sort of arrangement, if the gentleman has such a poor opinion of his colleagues as to think it is necessary, whereby we will guarantee that the money allowed is paid to the secretary.

Mr. DAWSON. The gentleman is arguing against all that he has contended for in this House as a member of the Appropriations Committee.

Mr. SHERLEY. The gentleman is welcome to that conclusion.

Mr. MACON. Mr. Chairman, I move to strike out the last two words. I asked the gentleman from Georgia a while ago the necessity for putting clerks to Congressmen upon the roll, and he could not give me the necessity therefor. Therefore, if there is no necessity for it, I can not see any reason why there should be a change made. There ought to be a necessity for every character of legislation that this House engages in. We ought not to legislate simply to please some whim of some one who may happen to occupy confidential relations to Members of this House.

I am opposed to putting the clerks of Representatives upon the roll. I have had a clerk ever since I have been a Member of Congress, and every month I indorse to him the check that I receive, and allow him to draw his $125 in person. The money does not find even a temporary lodgment in my pocket. If every Congressman will do that, why should there be any necessity for changing the relations that exist between the Congressman and his clerk?

Mr. BARTLETT of Georgia. May I interrupt the gentleman to say that I have never collected one of those checks in my life, and I have been here 16 years?

Mr. MACON. I thought so.

Mr. BARTLETT of Georgia. I have never collected even one.

Mr. MACON. Then what is the necessity for making this change? Now, sometimes it happens that unpleasant relations arise between Representatives and their clerks. That has happened to me during only one session of Congress since I have been a Member of it. I was then so unfortunate as to get upon my hands a young man who lost his head when he got to Washington. He was a nice young man at home, but the influences that surrounded him here carried him off his feet, and he got to be absolutely useless to me. I could not find him during the day. I looked for him for two days at one time, and finally the proprietor of the hotel, late in the evening of the second day, asked me if I had found my secretary, and I told him no. He said, "He is down in the billiard hall right now." So I had a boy go down for him and bring him up, and he and I severed our relations right there. If he had been upon the roll I would have had to take the trouble to go wherever that roll is kept and have gotten the keeper of it to take his name off of it, or he would have been paid at the end of the month, whether he worked for me or not. I then had to employ another secretary temporarily. I could not go home to get one, because we were right in the heat of a session of Congress. I had to have somebody at once, so I employed a young gentleman in this city; but I did not have him more than a week before he was as crazy as a loon, and I had to get rid of him. There were three during that particular session of Congress that I had to dispose of because of dereliction of duty, because they would steep their brains in drink and render themselves unfit for service. Now, do you tell me that we should bring upon ourselves a condition that would cause us to have to hunt up the roll keeper and make an explanation to him every time we had an unpleasantness of that kind in order to get rid of our clerk, or else let the clerk go on receiving the pay without doing any work? It is absolutely ridiculous, and I say to Members now that they must bring in a law and pass it regularly before they get them on the roll while I am a Member of Congress.

Mr. BARTLETT of Georgia. Does not the gentleman think it would have been much easier to have found the Clerk of the House, in whose office this payment is made, than it would have been to find the secretary he was hunting for?

Mr. MACON. I had to get rid of him first.

Mr. BARTLETT of Georgia. I would not be in favor of any law that would take away from the Member the right, with cause or without cause or at his pleasure, to change his private secretary.

Mr. MACON. Suppose we were a thousand miles away from here at our homes, and the same situation should arise. Then I would have to write to the Clerk and explain the trouble.

Mr. BARTLETT of Georgia. Telegraph to him.

Mr. MACON. That would cost 75 cents or $1. Why take upon ourselves that burden?

[The time of Mr. MACON having expired, by unanimous consent it was extended five minutes.]

Mr. MACON. While we are on this subject, I will say that something has been said about the salaries that our clerks receive. I do not know how it is with the clerks of other Members, but I have heard no complaint from the splendid, faithful, and efficient young man whom I have had with me for the past two years about his compensation. He is entirely satisfied with it. He recognizes the fact that there are but 12 months in a year, and that under no circumstances can you crowd 13 months into 12, and he is honorable enough to be willing to receive for his services what he obligates himself to receive, and what Congress has said shall be paid him; and I want to serve notice right here and now that during the next administration of the affairs of this House everyone who seeks a position in it must understand that there will be only 12 months instead of 13 in each year.

If they are not willing to perform the duties of their office for 12 months with compensation for 12 months, then let them get out of the way and let some one else take their places. I believe the Democratic Party means what it says when it declares for economy. I know that I, an humble member of that political faith, mean what I say when I say that I am in favor of retrenchment in the governmental affairs of this Nation, and so far as I am concerned I am going to do my best to bring that happy condition about. Therefore I would oppose the proposition to put the clerks of Congressmen on the roll for one reason, if no other, and that is that it would give them an extra month's pay and increase the expenses of the Government $50,000. I am opposed to 13-month years.

Mr. BARTLETT of Georgia. The gentleman is aware that the provision of clerks for Senators is $2,000, and the gentleman is going to vote for it. I have made no motion to increase the salary of anybody. Does not the gentleman think that when he votes now for a bill to pay the clerks of Senators $2,000 that that is extravagant?

Mr. MACON. In reply to the gentleman from Georgia I will gladly vote to cut the salary of clerks to Senators down to $1,800. But in my judgment, if a Senator does his duty by one-half of the constituents of his State, as he ought to do, and if the Senator's secretary does his duty by one-half of the Senator's constituents as he ought to do, then they, Senators and clerks, are entitled to greater compensation than Members of the

lower House of Congress and their clerks. A Senator who discharges his duty as faithfully as a Representative does, in my judgment, ought to have received greater compensation from the formation of our Government than a Representative does, for his work is greater. I insist that a Senator who represents the constituency of a State has a greater responsibility and a greater work upon him than a Representative who only represents one-seventh or one-eleventh of the constituency of his State.

Mr. BARTLETT of Georgia. May I ask the gentleman a question?

Mr. MACON. Certainly.

Mr. BARTLETT of Georgia. Is the gentleman a candidate for Senator from his State? [Laughter.]

Mr. MACON. I am not announcing myself as a candidate for the Senate now. When we get to that bridge we will talk about crossing it. I am talking now about what I think is proper for this House at this time to do in regard to the relationship that exists between a Representative and his clerk.

The CHAIRMAN. The time of the gentleman from Arkansas has expired, and the pro forma amendment will be withdrawn.

Mr. BARTLETT of Georgia. Mr. Chairman, I move to amend by striking out the words "two thousand" and inserting the words "one thousand five hundred."

The Clerk read as follows:

On page 12, lines 19 and 20, strike out the words "two thousand" and insert the words "one thousand five hundred," so that it will read "one thousand five hundred dollars."

Mr. BARTLETT of Georgia. Mr. Chairman, there is nothing to say about it, except that I do not agree with the statement that the gentleman from Arkansas made that the burdens and duties of a Senator are so much more onerous, so much greater, than those imposed by law and duty upon a Member of the House. I do think that the discrepancy in the pay which the Senators' clerks and the clerks to Members of this House get is too great.

I do not believe that they are entitled to any more. I notice my friend from Arkansas has neither admitted nor denied the question I put to him whether he was a candidate for the United States Senate. I take it for granted that he is a receptive candidate, and I wish him much success in that new rôle. I do think, however, that he ought to wait until he dons the senatorial toga before he expresses the opinion that the duties of a Senator are so much more onerous and responsible than the duties of a Representative of this House. I offer the amendment, and I hope the gentleman from Arkansas will vote for it.

Mr. GILLETT. Mr. Chairman, the gentleman knows that his amendment if adopted would be futile. It has been for a long time the custom that one branch of the Legislature should be allowed to fix its own expenses, and if we should adopt an amendment like this, we know perfectly well that the Senate would put it back, and that furthermore we would have to yield.

It seems to me it is worse than useless, because it simply excites a little feeling over there as if we were interfering with their business when they abstain from interfering with ours. Knowing that it would be useless, without expressing any opinion as to the merits of the case, I hope that this amendment will be voted down.

Mr. BARTLETT of Georgia. Let me ask the gentleman, Is it not a fact that each Senator has other assistants in addition to his secretary?

Mr. GILLETT. I think so; I think each Senator has a messenger.

Mr. BARTLETT of Georgia. The word "messenger" is used, but he usually assists the Senator about his business.

Mr. GILLETT. They use them as they please.

Mr. BARTLETT of Georgia. In other words, they are not confined to having simply to do messenger work.

Mr. GILLETT. No; but the gentleman well knows it has long been the custom to allow each House to fix its own assistants and the salaries of those assistants, and that must necessarily be so, if the two Houses are to act harmoniously.

Mr. STEPHENS of Texas. Is it not also true that they have 22 stenographers, as reported by this bill, to Senators who are not chairmen of committees?

Mr. GILLETT. I think so.

Mr. STEPHENS of Texas. Does not that include almost all of the Members of the Senate?

Mr. GILLETT. No; I think the majority of the Members of the Senate are the chairmen of committees.

Mr. STEPHENS of Texas. Can the gentleman inform us how many committees there are and how many chairmen?

Mr. MADDEN. There are 35 Senators who are not chairmen.

Mr. GILLETT. Therefore two-thirds are chairmen.

Mr. STEPHENS of Texas. So they have a stenographer for each committee, and then 22 stenographers to Senators who are not chairmen of committees.

Mr. GILLETT. Exactly.

Mr. STEPHENS of Texas. Then they have a messenger.

Mr. GILLETT. Yes; I think so. They have a clerk, a stenographer, and a messenger.

Mr. SHERLEY. Mr. Chairman, I thoroughly agree with the gentleman as to the rule that has heretofore been observed in that class of matters, particularly pertaining to each House, and I desire that it be still observed, but I suggest to the gentleman that perhaps the House has some sort of a precedent for interfering, inasmuch as the Senate is now proposing to regulate the rules of this body.

Mr. GILLETT. They are just adopting a joint rule.

Mr. SHERLEY. Well, this would have to be acted upon by the Senate.

Mr. GILLETT. Yes; and we know how it would be acted upon by the Senate. Of course, we know we would have to yield; it would be simply walking up the hill and then walking down again, and it would create ill feeling between the two branches, without accomplishing any good; and I hope that the amendment will not be adopted.

Mr. MANN. Mr. Chairman, I do not oppose the proposition to reduce the salaries of the Senators' clerks because they fix the salaries. But I oppose it on merit. There is not a Senator of the United States who half fulfills the duties of his office who does not require all of the employees who are given to him, including the clerk, the stenographer, and the messenger. Let us take in this House, for instance, my friend from Arkansas [Mr. MACON], who is opposed to the proposition to in any way increase the pay of his clerk. I have profound sympathy for the clerk of the gentleman from Arkansas. I know that he earns a great deal more than the salary he gets.

I have watched the gentleman from Arkansas on the floor of this House, and, with the limited clerk hire which he is given, he has often saved to the Government large sums of money; and when he considers that we appropriate annually in the neighborhood of a billion dollars, that at the last session of Congress we enacted more than 300 public laws and a great number of private laws, that Members of Congress are supposed to keep track of the business of the House, and, in addition, to answer their correspondence, their constituents at home, and people throughout the country, it is idle to say that the pay now given to a clerk is too much, either in the Senate or the House. It would be well for the country if the Members of Congress could employ secretaries at a salary of four or five thousand dollars. It would be a great saving to the country, both in the way of money and in the way of legislation, if the clerks of Members could be employed of such capacity that they were able somewhat to judge of the merits of legislation and of appropriations, and aid the Member of Congress in the study which he must give to the subject. If the Member from Arkansas [Mr. MACON] should have three clerks instead of one, he could keep them all busy in the interest of the Government.

The CHAIRMAN. The question is on agreeing to the amendment.

The question was taken, and the amendment was rejected.

MESSAGES FROM THE PRESIDENT OF THE UNITED STATES.

The committee informally rose; and Mr. FOSTER of Vermont having taken the chair as Speaker pro tempore, sundry messages, in writing, from the President of the United States were communicated to the House of Representatives by Mr. Latta, one of his secretaries.

LEGISLATIVE, EXECUTIVE, AND JUDICIAL APPROPRIATION BILL.

The committee again resumed its session.

The Clerk read as follows:

For contingent expenses, $300, one half to be disbursed by the Secretary of the Senate and the other half to be disbursed by the Clerk of the House of Representatives.

Mr. MORSE. Mr. Chairman, I move to strike out the last word. I would like to ask the gentleman in charge of this bill under what roll these people who sit at the doors around the galleries are employed.

Mr. GILLETT. Under the Doorkeeper of the House.

Mr. MORSE. What are they called?

Mr. GILLETT. They are messengers.

Mr. MORSE. What is the necessity for having so many of them?

Mr. GILLETT. The gentleman must ask the Committee on Accounts, which provided for them.

Mr. MORSE. Are they appropriated for in this bill?

Mr. GILLETT. Certainly they are appropriated for, as they have been provided for by legislation of the House.

Mr. MORSE. And the same number is appropriated for in the bill as we have had heretofore?

Mr. GILLETT. The same number.

Mr. MORSE. I notice, Mr. Chairman, that there are two sitting at each door at least——

Mr. MANN. Three at some of them. Some are on the soldiers' roll.

Mr. MORSE. The gentleman from Illinois suggests three. It seems to me, if we are going to economize, this is a pretty good place to economize. They are sitting around these doors so thick that you have to fall over them or over the cuspidors in order to get in. I would like to ask one further question. Do these elevators run the year round?

Mr. GILLETT. I think so.

Mr. MORSE. Do all of them run the year round?

Mr. GILLETT. Not in the summer; some get a vacation.

Mr. MORSE. You are appropriating for elevator men at the rate of $100 a month, more than I ever heard of being paid to elevator men. When these men are not employed, are they still on the roll?

Mr. GILLETT. Yes. I will say to the gentleman that in my opinion in this Capitol we are employing more men at higher salaries for the same work than anywhere else in the United States. I suppose that is currently known and admitted, and that there is no question about it. If we want real reform in expenses, there is no place better than right here at the Capitol.

Mr. FITZGERALD. We will do it next year.

Mr. GILLETT. We will see.

Mr. MORSE. I hope the gentleman from New York is right, but I fear not. I believe the time to begin is right now, when we are passing this bill.

Mr. DAWSON. If the gentleman will permit me, perhaps I can give him some information in regard to the elevator conductors. As the gentleman perhaps knows, the elevator conductors are under the Superintendent of the Capitol, but he, under the law, is under the direction of the Department of the Interior, so that the elevator conductors in the House only enjoy such privileges as civil-service men enjoy under the department. In other words, they get 30 days' leave of absence in the year.

Mr. MORSE. One more question.

Mr. BARTLETT of Georgia. If the gentleman will permit me, part of these employees of which the gentleman speaks are on what is called the old soldiers' roll. I think some 14 are on the soldiers' roll at $1,200 each, amounting to $16,800. They are in many instances the men who sit around the doors, and they are appointed, as I understand it, under the law as permanent employees; in other words, they are not subject to be dismissed by the Doorkeeper, who has charge of such other appointments. Fourteen men are on the old soldiers' roll and occupy the place of messengers to this House, as I understand it.

Mr. MORSE. Are they Civil War veterans?

Mr. BARTLETT of Georgia. Yes; altogether.

Mr. MORSE. And this is another method of pensioning them, is it?

Mr. BARTLETT of Georgia. I do not know how that is——

Mr. BURLESON. They draw a pension in addition.

Mr. BARTLETT of Georgia. All I know is they are upon what is known as the old soldiers' roll.

Mr. LIVINGSTON. Drawing a pension and a salary.

Mr. DAWSON. They are performing actual service.

Mr. FOSTER of Illinois. I think the men on the soldiers' roll take care of one door, and that with many of them who are not on the soldiers' roll there are four or five taking care of a door.

Mr. BARTLETT of Georgia. That may be; but my friend from Illinois can not put me in the position of attacking these positions, because I know a number of these old gentlemen. I am perfectly content; I think they are performing their duties very well, and I merely wanted to tell the gentleman they are old employees of this House on the soldiers' roll.

The CHAIRMAN. The time of the gentleman from Wisconsin has expired.

Mr. MORSE. Mr. Chairman, I ask unanimous consent for five minutes more.

The CHAIRMAN. Is there objection? [After a pause.] The Chair hears none.

Mr. BARTLETT of Georgia. They are there permanently, and it was a gratuity that that provision was made and they were put upon the soldiers' roll. I know that quite a number of them have died since I have been here, because their funeral expenses have been provided for by the House.

Mr. MORSE. I have no objection, Mr. Chairman, to taking care of these old soldiers in this way. I believe in war pensions, not civil pensions, and I believe in pensioning them most liberally. But I think it should be called "pensions;" I do not think it should be called "employment" unless they are employed, and I doubt very much if this whole army around this gallery is composed of Civil War veterans. If so, there are more veterans of the Civil War than I had any reason to believe there were.

Mr. GILLETT. I think the gentleman from Georgia stated it incorrectly when he said that all the messengers are on the soldiers' roll. All these messengers are not on the soldiers' roll. As I remember, there are to-day 15 on that roll.

I may also say to the gentleman that I think the gentleman from Iowa [Mr. DAWSON] was mistaken when he said, in speaking about the elevator conductors, that they were under the Department of the Interior. As I understand it, the Superintendent of the Capitol has three rolls—one is a Senate roll, one is a House roll, and the other his office roll. Those on the Senate and House rolls are political appointees, and are not under the Interior Department. They are simply patronage appointments of the House and Senate.

Mr. MORSE. They could not stay here unless we appropriated for them, anyway, Mr. Chairman.

Mr. GILLETT. No.

Mr. MORSE. One further question. Do these barbers that are employed here remain here the year round? When the House is not in session do they keep those barbers employed down there at $50 a month?

Mr. GILLETT. I think they have to do cleaning in the summer. They are annual.

Mr. BARTLETT of Georgia. Their salaries are annual. There is no question about that.

MESSAGE FROM THE SENATE.

The committee informally rose; and Mr. LONGWORTH having taken the chair as Speaker pro tempore, a message from the Senate, by Mr. Crockett, one of its clerks, announced that the Senate had passed the following resolutions:

Resolved, That the Senate has heard with deep sensibility the announcement of the death of Hon. JOEL COOK, late a Representative from the State of Pennsylvania.

Resolved, That a committee of six Senators be appointed by the Vice President, to join a committee appointed on the part of the House of Representatives, to take order for superintending the funeral of Mr. COOK, at Philadelphia, Pa.

Resolved, That the Secretary communicate a copy of these resolutions to the House of Representatives and to the family of the deceased.

Resolved, That as a further mark of respect to the memory of the deceased the Senate do now adjourn.

And that in compliance with the foregoing the Vice President had appointed as said committee Mr. PENROSE, Mr. OLIVER, Mr. CARTER, Mr. HEYBURN, Mr. OVERMAN, and Mr. JOHNSTON.

The message also announced that the Senate had passed joint resolution of the following title, in which the concurrence of the House of Representatives was requested:

S. J. Res. 125. Joint resolution to continue in full force and effect an act entitled "An act to provide for the appropriate marking of the graves of the soldiers and sailors of the Confederate Army and Navy who died in northern prisons and were buried near the prisons where they died, and for other purposes."

The message also announced that the Senate had passed without amendment bill of the following title:

H. R. 27400. An act to repeal an act authorizing the issuance of a patent to James F. Rowell.

LEGISLATIVE, EXECUTIVE, AND JUDICIAL APPROPRIATION BILL.

The committee again resumed its session.

The Clerk read as follows:

Office of the Clerk: Clerk of the House of Representatives, including compensation as disbursing officer of the contingent fund, $6,500; hire of horse and wagon for use of the Clerk's office, $900, or so much thereof as may be necessary; chief clerk, $4,500; journal clerk, and two reading clerks, at $4,000 each; stenographer to journal clerk, $980; disbursing clerk, $3,400; tally clerk, $3,300; file clerk, $3,250; enrolling clerk, $3,000; printing and bill clerk, $2,700; assistant to chief clerk, index clerk, and assistant enrolling clerk, at $2,500 each; assistant disbursing clerk, $2,400; notification clerk, $2,300; distributing clerk, $2,250; assistant journal clerk, and stationery clerk, at $2,200 each; librarian, and document and bill clerk, at $2,100 each; resolution and petition clerk, printing and document clerk, and assistant stationery clerk, at $2,000 each; assistant file clerk, and document clerk, at $1,900 each; assistant enrolling clerk, superintendent clerk's document room, assistant to printing and bill clerk, 2 assistant librarians, and 1 clerk, at $1,800 each; assistant index clerk, $1,700; four clerks, at $1,680 each; bookkeeper, assistant in Clerk's office, and assistant in disbursing office, at $1,600 each; special employee in clerk's document room, $1,580; telegraph operator, $1,400; assistant telegraph operator, authorized and named in resolution adopted January 15, 1902, $1,400; stenographer to clerk, $1,400; locksmith, who shall be skilled in his trade, $1,300; messenger in chief clerk's office, and assistant in stationery room, at $1,200 each; messenger in file room, 2 messengers in disbursing office, and assistant in House library, at $1,100 each;

assistant in document room, $980; 3 telephone operators, at $900 each; 3 telephone operators at $75 per month each from December 1, 1911, to June 30, 1912; night telephone operator, $720; for services of a substitute telephone operator when required, at $2.50 per day, $450; page, $900; assistant in charge of bathroom, $1,400; 3 laborers in the bathroom, at $900 each; 2 janitors, including one for index room and police detention room, at $840 each; janitor in House library, and janitor in file room, at $800 each; janitor in journal clerk's room, $720; 2 laborers, and page in enrolling room, at $720 each; allowance to chief clerk for stenographic and typewriter services, $1,000; 3 clerks to continue preparation of Digest of Private Claims, at $1,600 each; in all, $134,665.

Mr. COX of Indiana. Mr. Chairman, I reserve a point of order on the paragraph, especially to that part of the paragraph, on page 16, as follows:

Hire of horse and wagon for use of the Clerk's office, $900, or so much thereof as may be necessary.

What is the necessity for that?

Mr. GILLETT. That is the delivery wagon of the House, and simply delivers the stationery desired to Members.

Mr. COX of Indiana. That language, I see, is the same language that was in the last bill.

Mr. GILLETT. The same language; yes.

Mr. COX of Indiana. Now, I would like to know whether or not there was that amount of money so expended last year. How much was expended last year?

Mr. GILLETT. I do not remember. I do not think we inquired. It is the same amount every year, and we passed it along without investigating.

Mr. COX of Indiana. You do not know whether the full amount was expended or not?

Mr. LIVINGSTON. The full amount of what?

Mr. COX of Indiana. The full amount stated in the bill.

Mr. LIVINGSTON. Certainly it was. It belongs to the clerk that carries the stationery to your house and mine.

Mr. COX of Indiana. This is for the use of the wagon for the Clerk's office. Does the gentleman say that the $900 last year was all expended?

Mr. LIVINGSTON. Yes.

Mr. COX of Indiana. Was that the evidence before the committee?

Mr. LIVINGSTON. Yes.

Mr. GILLETT. The gentleman is right. It is for the support of the horse and wagon for the stationery department.

Mr. COX of Indiana. The point in my mind is whether or not it was a private proposition.

Mr. MADDEN. No; it is an express wagon.

Mr. JOHNSON of South Carolina. Mr. Chairman, I move to amend by striking out all after the word "three," on line 17, page 18, and ending with the word "each," on line 19.

The CHAIRMAN. The gentleman from South Carolina offers an amendment, which the Clerk will report.

The Clerk read as follows:

Page 18, line 17, beginning with the word "three," strike out "three clerks to continue preparation of Digest of Private Claims, at $1,600 each."

Mr. JOHNSON of South Carolina. Now, Mr. Chairman, I am going to give a little history. In the Fifty-eighth Congress, six years ago, there was a provision in the legislative bill to pay clerks for compiling a digest of claims that had been made through bills in Congress. I made some investigation at that time; and that little committee has been running on for several years. Several years ago somebody got a resolution through to appoint a committee to make a digest of the claims that were pending before Congress. No doubt Congress thought when they provided for this committee that a little book, showing in concise form the various claims that were pending before the Committee on Claims and the Committee on War Claims, would be gotten out. But up to that time—the Fifty-eighth Congress—I found that the three clerks had been working on this so-called digest for years, and they had included in this so-called compilation of claims every pension bill that had ever been introduced in Congress. They had a volume of matter that if it were all printed would fill a mail sack full of books, something that we would not have printed if they were to complete the work, something that nobody would have if it were printed.

In view of the situation as it then developed, I offered an amendment to this legislative bill, and that amendment prevailed. My amendment provided that this appropriation should complete this digest, and that was the language carried in the bill, "To complete the digest." But the work is still going on—three men at $1,600 a year each. This bill does not go into effect until July 1, 1911, and it contemplates carrying this expenditure on until July 1, 1912. Now, gentlemen, I called attention to this thing in the Fifty-eighth Congress. The facts were stated then.

Mr. CAMPBELL. How long had the item been running then?

Mr. JOHNSON of South Carolina. It had been running several years. It had cost thousands of dollars.

Mr. CAMPBELL. Then it is very much like a commission that never ends.

Mr. JOHNSON of South Carolina. A never-ending commission.

Mr. COX of Indiana. Has it been printed?

Mr. JOHNSON of South Carolina. Oh, no; they would have to get an order for printing from the Committee on Printing, which they would never do, because it would cost many thousands of dollars to print it.

Mr. COX of Indiana. The Committee on Printing would refuse to give them such an order?

Mr. JOHNSON of South Carolina. The Committee on Printing would refuse to give an order.

Mr. LIVINGSTON. If the gentleman will permit me, I desire to state to him that the Committee on Appropriations is not responsible for this appropriation in this bill, nor are we responsible for the character of it. It came to us from another committee, and it is in the bill.

Mr. JOHNSON of South Carolina. And I want it out.

Mr. STEPHENS of Texas. Will the gentleman inform us what it would be worth if printed?

Mr. JOHNSON of South Carolina. It would not be worth anything.

Mr. STEPHENS of Texas. Does the gentleman from South Carolina expect these men to work themselves out of a job?

The CHAIRMAN. The time of the gentleman has expired.

Mr. JOHNSON of South Carolina. I would like to have a little more time. I do not occupy the floor very much.

The CHAIRMAN. Is there objection to the gentleman proceeding for five minutes? [After a pause.] The Chair hears none.

Mr. JOHNSON of South Carolina. I was saying I called the attention of the House to these facts away back in the Fifty-eighth Congress. The facts were such then that the House felt justified in amending the bill so as to provide that that appropriation should complete the work, and still it is going on. Now, the gentleman from Georgia says that the Committee on Appropriations is not responsible. I am not saying anything about who is responsible. It is in the bill, and I want it out. We will see what the House wants.

Mr. MADDEN. Move it.

Mr. JOHNSON of South Carolina. I have moved to strike it out.

Now, I believe myself that a small volume which any good lawyer could take the claims pending in this House and compile in 6 or 12 months, setting forth the name of the claimant, the amount of the claim, and in a few words explaining the nature or basis of these claims, would be a valuable public document. I believe that when Congress authorized this thing to be compiled that is what they thought they would get. Now, they have been working for years, and the matter they have would make a mail bag full of books. The Committee on Printing of this House would never bring in a resolution authorizing it to be printed if this committee ever completes the work.

Mr. COX of Indiana. Who appoints these three clerks?

Mr. JOHNSON of South Carolina. I do not know; I do not know whose pets they are, or what they are worth, or anything about that. It is a useless piece of work, and has been extended entirely too long.

Mr. GILLETT. Mr. Chairman, these clerks were put upon this bill originally, not by a report from the Committee on Appropriations, but on a report from the Committee on Accounts, which was passed on the floor of this House. The Committee on Appropriations have reported it every year since, supposing that the House had expressed its opinion in favor of the provision; but of course the House can at any time strike out the provision for these clerks.

Now, I consider it my duty in general, having charge of the bill, to defend it, to make points of order upon amendments which are subject to them, and in general to support the bill; but I do not consider it my duty to oppose by argument, although I may in vote, an amendment which I think is proper, and therefore I have nothing more to say upon this amendment.

The amendment was agreed to.

The CHAIRMAN. If there be no objection, the Clerk will be authorized to correct the total of the paragraph to conform to the amendment just agreed to.

There was no objection.

Mr. MORSE. Mr. Chairman, on page 18, line 9, I move to strike out the words "one thousand four hundred" and insert in place thereof the words "six hundred."

Mr. Chairman, we are providing here for one assistant in the bathroom at $1,400 a year and three laborers in the bathroom at $900 a year, to assist this assistant, I take it, a total expenditure for that bathroom of $4,100 for the three months of this year that Congress will be in session. It seems to me that if we are going to begin to economize, here is another good place to do so, and for the three months that this House is in session and that bathroom is in use you can get a man to take care of it for $600, I am very certain, which is $200 a month.

Mr. MANN. Why not cut it off entirely? What is the use of having baths?

Mr. MORSE. If the gentleman from Chicago can get along without baths——

Mr. MANN. Evidently the gentleman from Wisconsin does.

Mr. MORSE. If the gentleman from Chicago can get along without baths, it is perfectly proper to cut them out. The gentleman from Wisconsin can not, and therefore is not in favor of cutting them out entirely.

I call the attention of the House to the fact that these attendants are paid ordinarily by the Members who get their baths there, in the way of tips, just as much as they would be paid in a private bathroom, and I am very much in favor of cutting down this useless expenditure.

Mr. MADDEN. I move, as an amendment to the motion of the gentleman, that all the language relating to the bathroom be stricken out and that the bathroom be closed, because most of the Members have their own bathrooms, and ought to have them, if they have not, and there is not any sense in having public bathrooms for private individuals, paid for at the Government expense.

The CHAIRMAN. The gentleman from Illinois offers an amendment, which the Clerk will report.

Mr. CAMPBELL. I should like to inquire something about this bathroom. How many tubs has it?

The CHAIRMAN. Gentlemen will suspend until the amendment is reported.

Mr. MADDEN. I move to strike out, beginning with the word "assistant," in line 8, down to and including the word "each," in line 10, on page 18.

Mr. PARKER. I raise the point of order. The second amendment——

The CHAIRMAN. If gentlemen will suspend, the Clerk will report the amendment.

The Clerk read as follows:

Page 18, strike out, beginning with the word "assistant," in line 8, down to and including the word "each," in line 10.

Mr. PARKER. I raise the point of order that it is not in order to move to strike out the paragraph until the clause itself is perfected.

The CHAIRMAN. The Chair so understands. The question is on the amendment offered by the gentleman from Wisconsin [Mr. MORSE].

Mr. CAMPBELL. Before voting on this I should like to ask to be more fully advised.

The CHAIRMAN. The gentleman from Kansas moves to strike out the last word.

Mr. CAMPBELL. I understand that the current appropriation carries this.

Mr. MANN. The question is, Is the next House going to take baths? [Laughter.]

Mr. CAMPBELL. The great unwashed come in for the next Congress and will have no use for bathrooms, so I think the amendment entirely appropriate; but there is valuable property there that ought to be taken care of, until there is use for the bathroom again.

Mr. COX of Indiana. It may be that on account of the fate of that side of the House in the recent election it is in favor of dispensing with the bathtubs. [Laughter.]

Mr. CAMPBELL. That may account for the fact that there will be no necessity of having bathrooms after the 4th of March. I think it is entirely proper that the amount paid to these men should be very materially cut down.

Mr. MANN. There are four men provided for the bathroom over there; there are a large number of bathtubs and they are almost constantly in use. Those Members of the House who do not take baths ought not to be too critical of those who do take them. [Laughter.]

Mr. CAMPBELL. Some Members of the House take baths where they live at seasonable hours of the day.

Mr. MANN. And at seasonable seasons of the year. [Laughter.]

Mr. CAMPBELL. Yes; some, of course, at proper seasons of the year.

Mr. RUCKER of Colorado. Gentlemen have not forgotten that a great number of the Members on this side of the House took a bath when they went up Salt River on the 8th of November.

Mr. CAMPBELL. Yes; that helped some. [Laughter.]

The CHAIRMAN. The pro forma amendment will be withdrawn, and the question is on the amendment offered by the gentleman from Wisconsin.

The question was taken, and the amendment was lost.

The CHAIRMAN. The question now is on the amendment offered by the gentleman from Illinois [Mr. MADDEN].

The question was taken; and on a division (demanded by Mr. GILLETT) there were 30 ayes and 29 noes.

Mr. GILLETT. Mr. Chairman, I ask for tellers.

Tellers were ordered, and the Chair appointed as tellers Mr. GILLETT and Mr. MADDEN.

The committee again divided, and the tellers reported that there were 44 ayes and 43 noes.

So the amendment was agreed to.

Mr. MANN. Mr. Chairman, I offer the following amendment, which I send to the Clerk's desk.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

Insert at the end of line 20, page 18, the following:
"The Superintendent of the Capitol is directed to dispose of the bathtubs and furnishings of the bathrooms in the House Office Building and cover the proceeds of the same into the Treasury."

The CHAIRMAN. The question is on the amendment.

The question was taken, and the amendment was agreed to.

Mr. JOHNSON of South Carolina. Mr. Chairman, I move to strike out the last word before we leave that paragraph. This paragraph we are now considering in such a dignified and solemn way provides for the employment of a great many people around the House of Representatives from July 1, 1911, until July 1, 1912. What I am particularly anxious to know from the gentleman who has charge of this bill is who is going to fill all these offices after next July.

Mr. MADDEN. The same people that fill them now.

Mr. LIVINGSTON. The same people that are now occupying the positions.

Mr. JOHNSON of South Carolina. This bill does not go into effect until July next.

Mr. GILLETT. I beg the gentleman's pardon; I did not catch his question.

Mr. JOHNSON of South Carolina. I say this bill does not go into effect until next July, and there are a great retinue of employees around the offices. Now, until the assembling of Congress in December, who fills these places, and upon whose authority do all these janitors and doorkeepers and clerks of committees that have not been appointed fill these positions?

Mr. GILLETT. Some are under the Doorkeeper and some under the Clerk and some under the Sergeant at Arms.

Mr. JOHNSON of South Carolina. Yes; but here is a clerk of the Committee on Merchant Marine and Fisheries and various other committees that have not been organized.

Mr. GILLETT. I understand; but the old organization holds until it is filled with a new one.

Mr. LIVINGSTON. Always; and the current appropriation bill carries their pay.

Mr. SHERLEY. Is that true of the Sergeant at Arms after the session closes?

Mr. GILLETT. I suppose so.

Mr. SHERLEY. Under what law?

Mr. CANNON. Under the law of necessity, so that Members may get their monthly pay.

Mr. MANN. The Sergeant at Arms must exercise the duties of his office until a new Sergeant at Arms is elected. That is the law.

Mr. JOHNSON of South Carolina. The committee clerks appointed for this Congress will continue to act as clerks to committees which have not been organized?

Mr. GILLETT. Certainly. They always do.

Mr. JOHNSON of South Carolina. Well, that is a lame place in the law.

Mr. BARTLETT of Georgia. Mr. Chairman, may I suggest to the gentleman from South Carolina that only those clerks to committees who are known as annual clerks, and who get an annual salary, will be retained?

Mr. GILLETT. That is what he asks.

Mr. BARTLETT of Georgia. There are quite a number of committees that have session clerks, whose duties and whose salaries expire with the session of Congress on March 4, and who will not be clerks and who will not get any salary after that time. Take committees such as the Ways and Means Committee and the Committee on Appropriations and a number of others that it is not necessary to name, they have annual clerks authorized by law, and the salaries of those clerks are annual,

and they will receive the salary until they are either removed or succeeded by somebody else. Does that give the gentleman the information?

Mr. JOHNSON of South Carolina. That is very clear and ought to be very satisfactory to some of the membership of this House, because it certainly gives them a good deal of grace.

Mr. GILLETT. Mr. Chairman, I ask unanimous consent to reconsider the vote that was just taken by which we moved to sell the bathtubs.

The CHAIRMAN. The gentleman from Massachusetts asks unanimous consent to reconsider the vote which has just been taken in regard to the bathtubs. Is there objection?

Mr. MANN. Mr. Chairman, reserving the right to object, I would like to know why the gentleman wishes to reconsider. What is the object of having the bathtubs when they will only collect dirt, and may be filled with coal, as they are in some houses?

Mr. GILLETT. Mr. Chairman, I have never been in these rooms myself, but I suppose we have over there an elaborate system of bathtubs and plumbing, which has been very expensive. It has been put in simply for that purpose, and the rooms would not be available for any other purpose, and to sell the bathtubs and get a few hundred dollars would be simply spoiling what cost a great many thousand dollars and what would be valuable for the future. It seems to me that, on reflection, the House would not approve such conduct, that it would be an extravagance, and I think we ought not to sell those bathtubs. The building is arranged for them, and I think they ought to be left there.

Mr. FITZGERALD. Does the gentleman not think that they should be left there as monuments to a policy?

Mr. GILLETT. I have nothing to say about the original wisdom of putting them in. It may have been wise or it may have been foolish, but after spending a large sum of money to put them in, I think it is unwise now to get a very small return and spoil those elaborate rooms. I think the gentleman from Illinois [Mr. MANN], on reflection, will think so himself.

Mr. MANN. Oh, I think it is a mistake not to operate the bathrooms.

Mr. GILLETT. They will be operated if we have them.

Mr. MANN. But I think, also, it is a mistake to expect people to operate them for nothing, and I am not in favor of the House making a monkey of itself. To say that we will maintain bathrooms with no one to be in charge of them is ridiculous. I do not want to see the House take a ridiculous attitude, and while I could not vote for the proposition to do away with the attendants, still, the attendants having been done away with, I can see no reason for maintaining the bathtubs over there.

Mr. LIVINGSTON. May I suggest to the gentleman that we might rent them out and let other parties run them. [Laughter.]

Mr. MANN. Now, there is always a great deal of necessity for room over there in those bathrooms. If we increase the representation in the House in the next Congress, we will need these bathrooms to lodge some of my Democratic friends in.

Mr. GILLETT. They are in the basement, are they not?

Mr. MANN. They are below the basement.

Mr. GILLETT. Of course, if we keep them there, there will ultimately have to be at least one attendant, and he will undoubtedly be provided.

Mr. MANN. How can he be provided?

Mr. GILLETT. He can not be provided for immediately.

Mr. MANN. Oh, yes; of course I have no doubt the bathrooms and bathtubs will remain there in any event until the first session of the Sixty-second Congress, and that immediately following that, on the appointment of the Committee on Accounts, there will be a resolution presented and adopted providing, not only that the bathtubs shall remain, but instead of four, that they shall have six; and wishing to watch that procedure at the present I shall object to the request for unanimous consent.

The Clerk read as follows:

Clerks, messengers, and janitors to committees: Clerk to the Committee on Ways and Means, $3,000; assistant clerk and stenographer, $2,000; assistant clerk, $1,900; 2 janitors, 1 at $1,000 and 1 at $720; clerk to the Committee on Appropriations, $4,000, and $1,000 additional while the office is held by the present incumbent; assistant clerk and stenographer, $2,500; assistant clerk, $1,900; janitor, $1,000; clerks to Committees on Accounts, Agriculture, Claims, District of Columbia, Foreign Affairs, Interstate and Foreign Commerce, Indian Affairs, Invalid Pensions, Judiciary, Military Affairs, Pensions, Post Offices and Post Roads, Public Buildings and Grounds, Rivers and Harbors, War Claims, and clerk to continue Digest of Claims under resolution of March 7, 1888, 16 in all, at $2,500 each; clerk to Committee on Naval Affairs, $2,400; stenographer to Committee on Invalid Pensions, $2,190; clerks to the Committees on Banking and Currency, Census, Coinage, Weights, and Measures, Elections Nos. 1, 2, and 3, Enrolled Bills, Immigration and Naturalization, Industrial Arts and Expositions, Insular Affairs, Irrigation of Arid Lands, Labor, Library, Merchant Marine and Fisheries, Patents, Printing, Public Lands, Revision of the Laws, Rules, Territories, additional clerk to the Committee on Interstate and Foreign Commerce, and assistant clerk to the Committee on Invalid Pensions, 22 in all, at $2,000 each; assistant clerks to the Committees on Accounts, Agriculture, District of Columbia, Foreign Affairs, Indian Affairs, and Rivers and Harbors, 6 in all, at $1,800 each; assistant clerks to the Committees on the Judiciary and Pensions, 2 in all, at $1,600 each; assistant clerks to the Committees on Interstate and Foreign Commerce, Military Affairs, and Naval Affairs, 3 in all, at $1,500 each; assistant clerk to the Committee on Post Offices and Post Roads, $1,400; assistant clerks to the Committees on Banking and Currency, Claims, Public Buildings and Grounds, Public Lands, and War Claims, 5 in all, at $1,200 each; in all $133,010.

Mr. JOHNSON of South Carolina. If this is the end of the paragraph and an amendment is in order, I desire to offer one.

Mr. MACON. Mr. Chairman, I desire to reserve a few points of order.

The CHAIRMAN. The Chair will first recognize the gentleman from Arkansas.

Mr. MACON. Mr. Chairman, I reserve the point of order upon the language found on page 19, beginning on line 15 and ending on line 16, $500, which appears to be an increase of salary to that extent. Again, on page 20, line 9, I notice there is a clerk provided for the Rules Committee. That seems to be new, and I reserve the point of order against that position.

Mr. GILLETT. What line is that?

Mr. MACON. Page 20, line 9, which provides for a clerk for the Rules Committee, which seems to be new.

Mr. MANN. The Rules Committee already has that now.

Mr. MACON. I do not think it needs any clerk just now.

Mr. JOHNSON of South Carolina. We have not read that yet.

Mr. MACON. I beg the gentleman's pardon, the gentleman is way behind the times. [Laughter.] Now, in line 14, the same page, Foreign Affairs. It seems we are providing a clerk for that committee that has not heretofore been carried in the bill, so I make the point of order against those two new positions and the increase of salary, as mentioned on page 19.

Mr. GILLETT. Mr. Chairman, first as to the assistant clerk to the Committee on Foreign Affairs. That was passed last year in the deficiency bill, and this committee has done in this case exactly what is done in all cases, that where the House has expressed its opinion that a clerk's salary should be raised one year we have continued it in the future. So in regard to the clerk to the Committee on Foreign Affairs, the House has expressed its opinion and we have followed it.

As to the assistant clerk to the Committee on Appropriations, the gentleman is aware that we have a clerk to the Committee on Appropriaions whose presence prevents me from saying all I should like to say about him. He has been most valuable for a great many years. We have now an assistant clerk who has been there for a great many years, who is showing great capacity, and who we hope will grow up so that he can ultimately be the successor in, I hope, the far distant time to the present clerk.

Mr. MACON. If the gentleman will allow me to interrupt him——

Mr. GILLETT. Certainly.

Mr. MACON. In the nature of things that particular clerk will disappear before this appropriation begins.

Mr. GILLETT. Why, no; up to the present time in the Committee on Appropriations a change of party has made no difference in the change of clerks, the new party keeps the same clerks, and I suspect the same will follow next year.

Mr. MANN. The interesting thing, I may say to the gentleman, is that the clerk to the Committee on Appropriations in the House and the clerk to the Committee on Appropriations in the Senate, I believe, were both appointed by Democrats.

Mr. SHERLEY. Which accounts for their efficiency somewhat.

Mr. MACON. In my judgment, we have had mighty few Members of this House on the Appropriations Committee or any other committee who have rendered such efficient service to this country as the gentleman who occupies that position now, and we could not well get along without him.

Mr. MANN. The gentleman could not raise any controversy about that in the House or out of it.

Mr. GILLETT. And we wish to follow that. I think the gentleman will recognize the wisdom of it. We wish to follow that and make this assistant clerk a permanent official. He is showing great capacity, and we thought it was fair that his salary should be increased $500. And, then, as to the Rules Committee, the gentleman is aware that that was a new committee which was established last session, and I am very sure a resolution was adopted giving them a clerk. So, of course, this is not subject to a point of order.

Mr. MACON. Why did it not appear in your last appropriation bill?

Mr. GILLETT. It was in a deficiency bill last year.

Mr. DALZELL. The committee was reorganized and elected by the House.

Mr. MACON. Was there a resolution adopted authorizing a clerk for the committee?

Mr. GILLETT. There was; and I trust that as to the clerk of the Appropriations Committee the gentleman will not insist on the point of order. I think he will recognize in that committee, which does not change its clerk at the time of a change of administration, where it is not a partisan office, it is very desirable they should train up and well remunerate this competent clerk.

Mr. MACON. Mr. Chairman, I must insist upon the point of order against the increase of salary, but the other two points, of course, will have to be withdrawn because of the fact that they are authorized by a resolution of the House, which is existing law.

The CHAIRMAN. The Chair understands the gentleman from Arkansas [Mr. MACON] withdraws his point of order as to the items on page 20, and insists on his point of order as to the item of $500, on page 19.

Mr. MANN. Will the gentleman reserve his point of order for a moment?

Mr. MACON. With pleasure.

Mr. MANN. I hope the gentleman will not make the point of order on this increase to the clerk of the Committee on Appropriations. I do not like to detain the House, but I want to get the attention of the gentleman from Arkansas.

Mr. GARDNER of Michigan. I would like to say a few words, if I may be permitted to do so, at this point.

The CHAIRMAN. Does the gentleman from Illinois [Mr. MANN] yield to the gentleman from Michigan?

Mr. MANN. I will be through in a moment. The Committee on Appropriations, as the gentleman from Arkansas [Mr. MACON] well knows, in the preparation of the appropriation bills, and in the information which is furnished in connection with the appropriation bills, does work which is invaluable to those Members of the House, who distinctly include the gentleman from Arkansas, who follow the appropriation bills. It is impossible for Mr. Courts to do all of the work in the Appropriation Committee that devolves upon a clerk. The appropriations have increased so much in recent years, and the items in reference to appropriations have so largely increased in number, that it is not practicable for one person to do that. Some of these committee clerks are busily engaged all the summer, but this committee clerk is practically working all the time. The clerks to the Committee on Appropriations never cease work. I do not know whether the next chairman of the Committee on Appropriations will keep this assistant clerk or not, but of course it is wholly within his power to obtain a new clerk in the place of the one that is there now, but I apprehend that whoever goes in as chairman of the Committee on Appropriations is likely to follow the precedent which has been set by many chairmen in recent years of not changing the clerical force in that committee except as to the one which does his private work, if there be such a person. The gentleman from Arkansas and I agree upon most of these items, and I hope that in the interests of economy he will permit this increase to be made to this clerk.

Mr. MADDEN. Mr. Chairman, I would like to say a word about this proposition.

The CHAIRMAN. The gentleman from Michigan [Mr. GARDNER] is on his feet and waiting for recognition.

Mr. GARDNER of Michigan. Mr. Chairman, I wish to add a word at this point, if the gentleman still insists on his point of order.

It has been my privilege to be on the Committee on Appropriations now for 10 regular sessions of the Congress. For a long time I did not know what the politics of the present clerk of that committee was. I have learned incidentally that he came here many years ago, appointed by a leading Democrat from Tennessee. He has been here continuously since, though different parties have controlled the House.

Later there came a vacancy in the assistant clerkship. It so happened that a conspicuous Democrat from Indiana was then chairman of the Appropriations Committee, and he appointed a young man from his own State. I do not know what his politics is, but it does not make any difference.

In the committee we never inquired as to that. He was very competent, having been trained in that committee, and when the clerk of the Committee on Appropriations of the Senate failed in health they asked for his transfer there. The clerk of the Committee on Appropriations of the Senate died during the recent vacation, I believe. Now, what did the chairman of the Committee on Appropriations in the Senate, a Republican of Republicans, do? Looking only for one who could perform the most efficient service, not for the Republican Party, but for the Senate, he took this young Democrat, if he was such, as I assume he was, being appointed by a Democratic chairman of the Committee of Appropriations of the House, and made him clerk of the Committee on Appropriations of the Senate.

Mr. LIVINGSTON. At a higher salary than we were paying.

Mr. GARDNER of Michigan. At a higher salary.

Mr. LIVINGSTON. And we will lose this one in the same way, if we can not give him this increase in salary.

Mr. GARDNER of Michigan. I have never known the politics of the present assistant clerk of the Committee on Appropriations of the House. I assumed that he is a Republican, as he was appointed by a Republican chairman of that committee, but it is not economy, I will say, if I may have the attention of the gentleman from Arkansas——

Mr. MACON. I am listening to the gentleman.

Mr. GARDNER of Michigan. It is not economy to whittle on the salaries of such men, on whose knowledge so much depends. I hope the gentleman will withdraw his point of order and allow the sum named in the bill to stand.

Mr. MADDEN. Mr. Chairman, I want to say a word or two. I happened for some time to be a member of the Committee on Appropriations, and I watched with a great deal of interest the valuable work done by the clerks of that committee. The knowledge which they have of the laws of the country and its financial needs would justify the payment of very much more compensation than they receive. The clerk of the Committee on Appropriations has a knowledge of the Nation's needs superior to that of any other man in the Government service. That young man who is acting as his assistant is a lawyer. He is a bright, clean-cut, forceful, courteous, able man. He has been in the work long enough to be familiar with it. It is not merely clerical work that these men have to do. They have to be familiar with the laws. They have to be able to tell the Committee on Appropriations what law the appropriations are based upon; and there is not a law upon which any appropriation is based that can not be turned to in an instant by these men who are acting as clerks of this committee. The fact is that the reputation of the Committee on Appropriations is largely due to the efficiency of the clerks. I do not think I overstate it when I say that. I would regret very much to see anything done in this committee that would in any way embarrass a work which is so important as that of this great Committee on Appropriations. It takes a long period of training to make a man efficient for that work; and the young man who is assisting the clerk of the committee has given his time, night and day, to that work. He has made a thorough study of it.

Mr. MACON. How long has he been with the committee?

Mr. MADDEN. He has been with the committee four years, if I am not mistaken. He has been there long enough to have served his apprenticeship, long enough to have become grounded in the work, long enough to do good work, long enough to be able to fill the place of the man who is the clerk of the committee in case of absolute need. He is the most efficient man I have seen appointed to any place in connection with the service of the House. The importance of the place he occupies is so great that it would be unfortunate to the service of the committee should he be called upon to leave the service by reason of the fact that he could get more compensation in some other place. There is no doubt whatever but that he would be infinitely better off if he were to take some place in the commercial life of the country than to retain the place he now holds. But, in the interest of the Government, I think it is clearly our duty to keep him, if we can.

Mr. FITZGERALD. Mr. Chairman, I wish to call the attention of my colleagues on this side to the peculiar conditions affecting the Committee on Appropriations, one that is of very great importance at the opening of the coming session of Congress. The Committee on Appropriations has five annual appropriation bills, in addition to the deficiency bill, and there are usually two or three of those in a year. Notwithstanding that fact, its clerical force is no greater than the clerical force of the Committee on Naval Affairs or the Committee on Military Affairs. The clerks are paid a little higher. Gentlemen familiar with the work required in the naval appropriation bill must realize the enormous increase of work that falls on those clerks in the preparation of seven or eight important appropriation bills.

To the next Congress there have been elected but three Democrats who are now serving on the Committee on Appropriations. It will be necessary to put upon that committee nine Members of the House who have had no service upon that committee. It will be one of the difficult tasks of the House so to adjust matters that Members without that experience will be able to familiarize themselves with the work of the committee suffi-

ciently early to render that effective service that the House and the country will demand. This gentleman who now fills the position of assistant clerk is a competent man. If through illness or any misfortune the clerk of the committee should be incapacitated, the committee would require the services of this assistant clerk, regardless of the compensation he might demand. I doubt if it would be possible to organize a committee from the membership of the House that could perform its work satisfactorily if these two men, the clerk and the assistant clerk, were incapacitated for service. For a number of years it has never been necessary, has never been part of the work of the chairman of the committee, or any member in charge of a bill, to prepare conference reports and statements, these gentlemen having performed that work.

The slightest error or slip of the pen might involve the House and Congress in difficulties that could not be adequately described, and perhaps would result in contentions and scandals that might involve the reputations of many Members. Yet these men have served so efficiently and faithfully, that during many long years there has never been the slightest error or mistake with which any Member might find fault. These places, in my judgment, come nearer to being of a class where men will be retained in them, regardless of their politics, than any other places in the Government service. I recall, when I was first assigned to the Committee on Appropriations, approaching the end of a session just immediately preceding an election, I remarked jocosely one day that if the election were to favor the Democrats in the coming fall there were two good places that the Democrats would have at their disposal, referring to the clerkship and the assistant clerkship of the Committee on Appropriations, the men occupying those positions being before me. Everybody in my hearing laughed heartily, and then informed me that both these gentlemen were Democrats, one having been in the service of the committee more than 20 years, and the other having been in the service of the committee over 12 years. It was one of those interesting things that show that in a body like this the efficient men, the men essential to the public service, are retained and appreciated regardless of their political opinions. Now, I believe, considering the nature of the work, considering the character of the positions these men hold, considering the fact that they are engaged in the work of the committee not only while it is in session but, with the exception of perhaps four to six weeks in the heated session, during the entire year, the compensation of $2,500 is reasonable, and I hope under the circumstances my colleague will not insist on the point of order.

Mr. MACON. Mr. Chairman, I did not know that the gentleman whose salary I attempted to prevent being increased was quite so important to the committee until now. If I had understood it, I would not have reserved the point of order against it. What I said about gentlemen passing out of office before the next Congress convened was intended to convey the idea that I did not want anybody to think that I would under any circumstances try to punish any official of this House simply because he might be of an opposing political faith to myself. I do not want anyone to think that I would use politics as a weapon to punish any worthy official with. But as to this gentleman, it seems from what the members of the committee say, that his services are almost invaluable, and I hope he will be retained in his present position by the committee, whether he is a Democrat or a Republican. I would not give the snap of my finger for that, so long as the duties of the official are faithfully and efficiently performed. Politics has nothing to do with clerical positions, in my judgment. Efficiency is the thing we want. After hearing the members of the committee say it is necessary for this gentleman to remain in his present position, and that he deserves an increase in his salary for his efficient services, I will withdraw the point of order gladly.

The CHAIRMAN. All points of order are withdrawn.

Mr. GILLETT. Mr. Chairman, I offer the following formal amendment.

The Clerk read as follows:

On page 21, in line 2, after the word "thousand," insert the words "five hundred."

Mr. GILLETT. That corrects a mistake in the total.

The amendment was agreed to.

Mr. JOHNSON of South Carolina. Mr. Chairman, I move to strike out the last word for the purpose of getting some information from the chairman of the committee. On page 19, line 22, it says, "and clerk to continue digest of claims under resolution of March 7, 1886." I want to know if that is the clerk who is detailed from the Court of Claims to the Committee on War Claims, or is it a clerk employed under the same resolution that I have been attacking this afternoon?

Mr. GILLETT. No; that is the one the gentleman first mentioned and he is a valuable official.

Mr. JOHNSON of South Carolina. He is a very valuable man and I do not care to interfere with him, but if it is a clerkship to this same committee that I have been complaining about this afternoon I should want to strike it out.

Mr. GILLETT. It does not refer to him.

Mr. JOHNSON of South Carolina. Mr. Chairman, I withdraw my pro forma amendment.

The Clerk read as follows:

Office of Doorkeeper: Doorkeeper, $5,000; hire of horses and wagons and repairs of same, $1,200, or so much thereof as may be necessary; assistant doorkeeper, $2,500; department messenger, $2,250; special employee, John T. Chancey, $1,800; special employee, $1,500; superintendent of reporters' gallery, $1,400; clerk to Doorkeeper, $1,200; janitor, $1,500; 25 messengers, at $1,180 each; messenger to the Speaker's table, $1,200; 14 messengers on the soldiers' roll, at $1,200 each; 12 laborers, at $720 each; 2 laborers in the water-closet, 1 at $840 and 1 at $720; skilled laborer, $840; 9 laborers, at $720 each; laborer, $680; 2 laborers, known as cloakroom men, at $840 each; 8 laborers, known as cloakroom men, 2 at $720 each, and 6 at $600 each; female attendant in ladies' retiring room, $800; superintendent of folding room, $2,500; chief clerk $2,000; 4 clerks, at $1,600 each; foreman, $1,800; assistant foreman, $1,200; second assistant foreman, $1,200; messenger, $1,200; page, $720; laborer, $720; 32 folders, at $900 each; 2 night watchmen, at $720 each; 2 drivers, at $840 each; 2 chief pages, at $1,200 each; messenger in charge of telephones, $1,200; messenger in charge of telephones (for the minority), $1,200; 46 pages, during the session, including two riding pages, 4 telephone pages, press-gallery page, and 10 pages for duty at the entrances to the Hall of the House, at $2.50 per day each, $23,150; horse and buggy for department messenger, $250; superintendent of document room, $2,900; assistant superintendent, $2,100; clerk, $1,700; assistant clerk, $1,600; 7 assistants, at $1,280 each; assistant, $1,100; janitor, $920; 2 attendants in the old library space, at $1,500 each; messenger to press room, $1,000; in all, $192,710.

Mr. MORSE. Mr. Chairman, I move to strike out the last word. I would like to ask the gentleman in charge of the committee what the 25 messengers mentioned at the end of line 9, page 23, do.

Mr. GILLETT. Those are the various messengers at the doors of the House.

Mr. MORSE. Including the galleries?

Mr. GILLETT. Some on the floor and some in the galleries.

Mr. MORSE. Does not the gentleman think that we could get along with half of that number very nicely without increasing the labor of any of them to any great extent?

Mr. GILLETT. Mr. Chairman, as I told the gentleman earlier in the day, I believe we employ a great many more men in the House than is necessary. I made up my mind some years ago that I should not, in my zeal for economy, try to interfere with the force of this House. When I once attempted it I found I was running up against personal friends and that I was incurring a general unpopularity by trying to curtail the force in the House, and I concluded that that was a matter I would let alone, for it became too personal. I say frankly that I do believe that we employ a great many more men at a higher salary than is necessary.

Mr. MORSE. In view of the statement of the chairman in charge of the bill I will withdraw my pro forma amendment and offer the following.

The Clerk read as follows:

On page 23, line 9, strike out the word "twenty-five" and insert the word "fifteen."

Mr. GILLETT. Mr. Chairman, of course this amendment does not begin to cure the abuse. What ought to be done is to thoroughly investigate the organization of the House force, if we are going to do anything, and amend it all along the line. There is ample field for it, and this is simply a mere haphazard guess of what is needed.

Mr. MORSE. I quite agree with the gentleman that this does not cure the abuse, and I quite agree with the gentleman from Massachusetts that this is an abuse, and I will say to him that it is in a sense a haphazard amendment. It has seemed to me for a long time that we have altogether too many employees, and the gentleman has admitted that here is one spot where we can economize by cutting out, he said, perhaps half. I have been very liberal. I have cut out only 10 of the 25, and I sincerely hope that this amendment will pass.

Mr. LIVINGSTON. Mr. Chairman, I do not think this House is prepared to-day to go with a blind bridle in this way. I have been here 20 years, and I can not tell how many doors we have and how many messengers we must have. It has been a long time since the House administrative forces have been reorganized. That would be the only intelligent way to go about it. We have janitors many. You might as well put in an amendment cutting off half of them. There is no man on the floor who could tell whether that amendment would be proper or improper. There is not a man here who can tell whether we should have 10 or 15 messengers, or how many doors there are to be cared for. I hope the House will not do business in that way. You can pass this over, if you wish, and appoint a committee to investigate the matter and report back

to the House in time for the deficiency bill, and it can be corrected then; but the whole organization should be overhauled. You can find men here everywhere that you and I do not see any use for, but still we have not investigated the matter and we do not know now. The only point I wish to submit is that you should act intelligently and not hastily in this matter.

The CHAIRMAN. The question is on agreeing to the amendment.

The question was taken; and on a division (demanded by Mr. MANN) there were—ayes 23, noes 41.

So the amendment was rejected.

The Clerk read as follows:

Clerk hire, Members and Delegates: To pay each Member, Delegate, and Resident Commissioner, for clerk hire, necessarily employed by him in the discharge of his official and representative duties, $1,500 per annum, in monthly installments, $598,500, or so much thereof as may be necessary; and Representatives and Delegates elect to Congress whose credentials in due form of law have been duly filed with the Clerk of the House of Representatives, in accordance with the provisions of section 31 of the Revised Statutes of the United States, shall be entitled to payment under this appropriation.

Mr. RUCKER of Colorado. Mr. Chairman, I offer the following amendment, which I send to the desk and ask to have read.

The Clerk read as follows:

Page 28, lines 6 and 7, strike out the words "$1,500 per annum," and insert the words "$2,000 per annum."

Mr. GILLETT. Mr. Chairman, I feel constrained to make the point of order against that.

The CHAIRMAN. Does the gentleman make the point of order?

Mr. GILLETT. Yes.

Mr. MANN. Mr. Chairman, before the point of order is sustained let us see whether it is subject to the point of order.

The CHAIRMAN. What is the desire of the gentleman?

Mr. MANN. I desire to discuss the point of order.

The CHAIRMAN. The Chair understands that the allowance for clerk hire is fixed by law at $1,500.

Mr. MANN. Perhaps the Chair will be willing to hear me.

The CHAIRMAN. The Chair will hear the gentleman.

Mr. MANN. There is no law that fixes the salary at $1,500.

Mr. GILLETT. It is fixed at $1,200.

Mr. MANN. The current appropriation law provides for a clerk hire of $1,500, and that is only for the current fiscal year. There was a joint resolution passed by Congress some years ago providing for the payment of clerk hire during the session at the rate of $1,200 per annum. That has been extended from time to time in the appropriation acts, by increasing the amount of the appropriation, and the question is whether the paragraph itself is not itself subject to a point of order. Of course, if the paragraph itself is subject to a point of order, then the amendment offered by the gentleman from Colorado is not subject to the point of order. I call the attention of the Chair to the joint resolution of March 3, 1893, which provided that—

On and after April 1, 1893, each Member and Delegate of the House of Representatives, etc., may, on the first day of every month during the sessions of Congress, certify to the Clerk of the House of Representatives the amount which he has paid or agreed to pay for clerk hire necessarily employed by him in the discharge of his official duties during the previous month, and the amount so certified shall be paid by the Clerk out of the contingent fund of the House on the fourth day of each month to the person or persons named in each of said certificates: *Provided*, That the amount so certified and paid for clerical services rendered to each Member, etc., shall not exceed $100 for any month during the session.

I may be mistaken, but I think I am not, in saying that that is the only legislation which Congress has enacted upon the subject, except in appropriation bills. I am not sure but that there was a resolution subsequent to that making the clerk hire annual instead of sessional.

Mr. BARTLETT of Georgia. That is right.

The CHAIRMAN. The Chair would ask the gentleman from Illinois how the amount was fixed at $1,500? Was it by resolution reported from a committee and adopted by the House?

Mr. MANN. I understand not. I understand the amount of $1,500 was fixed simply in the same method that the item is carried in this appropriation bill.

Mr. BARTLETT of Georgia. May I interrupt the gentleman to say that he is correct about the amount? There was a resolution, however, that made it annual in place of sessional.

Mr. MANN. I think that is correct. It was made annual, anyway. The original resolution was passed before the Fifty-second Congress. When I came into the Fifty-fifth Congress, and just before that, as I recollect, the clerk hire was made annual. It was annual when I came into the House.

The CHAIRMAN. May the Chair call the attention of the gentleman from Illinois to the provision in the legislative appropriation bill of 1907, which reads:

Each Representative and Delegate for clerk hire, necessarily employed by him in the discharge of his official and representative duties, $1,500 per annum, in monthly installments. Representatives and Delegates elect to Congress whose credentials in due form of law have been duly filed with the Clerk of the House of Representatives, in accordance with the provisions of section 31, Revised Statutes of the United States, shall be entitled to payment under this appropriation.

Mr. MANN. I will call the attention of the Chair also to the fact that he will find identically the same language in the next appropriation law and the current fiscal year, and he will find identically the same language in this bill. It never was considered that made permanent law which would not be carried in other appropriation laws. If it had been considered to be permanent law, that is not necessary.

The CHAIRMAN. Of course that is true, but does not this provision extend beyond the life of the appropriation?

Mr. MANN. But it is perfectly clear this does not extend beyond the life of the appropriation because it expressly provides this appropriation. That is the language of the law which the Chairman read. That is in the current fiscal law and that is in the bill. That is legislation, but it applies only to this appropriation. It seems to me it is inevitable on the question of the point of order it was subject to the point of order itself.

The CHAIRMAN. The Chair desires to look for a moment at the act of 1893.

Mr. MANN. Now, subject to the passage of the resolution which was for the clerk hire, a resolution was passed providing that clerk hire should be annual instead of session but leaving the amount the same.

The CHAIRMAN. Can the gentleman state to the Chair when that resolution was passed?

Mr. MANN. I think it was passed in the Fifty-fourth Congress, but I have not referred to it. That resolution was either passed I think at the close of the session of the Fifty-fourth Congress or at the special session of the Fifty-fifth Congress. I am not sure.

Mr. GILLETT. Can the gentleman remember that?

Mr. MANN. I can remember I received clerk hire for the first month I was here at the Fifty-fifth Congress at the special session. May I ask the Chair whether he has volume 2, section 1151, of the Precedents before him?

The CHAIRMAN. Yes; the Chair has that.

The Chair is prepared to rule. If this was an increase of salary, if the $1,500 was a salary paid to the Members' clerks or to a specified officer of the Government, it would be clearly subject to the point of order under the rule that in the absence of a law fixing a salary the amount appropriated in the last appropriation bill has been held to be the legal salary. But this provision does not cover salaries, but makes an allowance to Members for clerk hire. If this introduced an appropriation for a new purpose, it would be subject to a point of order under the rule that a paragraph carrying an unauthorized appropriation being permitted to remain may be perfected by a germane amendment which does not introduce a new project of appropriation. It does not seem to the Chair that the amendment, which simply increases the amount of the appropriation, introduces a new project of appropriation, and therefore the Chair overrules the point of order.

Mr. MADDEN. Mr. Chairman, I move to amend the amendment of the gentleman from Colorado by substituting $1,800 for $2,000.

The CHAIRMAN. The gentleman from Illinois offers an amendment, which the Clerk will report.

The Clerk read as follows:

Amend the amendment by striking out "two thousand" and inserting "one thousand eight hundred."

The CHAIRMAN. The question is on the amendment.

Mr. RUCKER of Colorado. Mr. Chairman, it occurs to me that this matter is of extreme importance. It affects the usefulness of every Member of this House and the efficiency of each and every one of his undertakings. Several years ago, and about the time when this salary was increased from $1,200 to $1,500, a law was passed also increasing the salary of Congressmen. Now, unless it had been the purpose to compel a contribution from the extra $2,500 from the Congressman to the aid or assistance of his secretary, then surely the object sought by increasing only the salary of the Congressman would not perform the office of aiding the secretary. Now, the secretary is yonder at work all the time. The Congressman is supposed to be here, and is. The clerk does all the drudgery. He goes to the departments, he writes the letters, and attends generally to the business of the Congressman, whose duty is always here.

Furthermore, Mr. Chairman, I hope my colleagues will take into consideration another thing: Some of us live thousands of miles away, while some live only a few miles away. We bring our clerks with us. We pay their fare and their family's, of course, as in my own particular case; but, by the way, I will not stop to discuss these other matters, because I know but little about them. Yet because I am a new Member it does not follow I do not know what I am talking about upon this subject. In my own case, as I was saying, I not only pay the fare of my clerk and his family from Colorado, but I have had an assistant with him constantly since I have been here, and a great deal of the time I have had a third assistant, and yet I have not felt myself overwell served, though I have the most efficient clerk in Congress; nor do I believe there is a Member of this House that believes he is overwell served by the services he has from one clerk. On the contrary, he knows he is not served too well to meet the demands of his constituents, and that he can not be served with a pittance of $125 a month to this clerk.

Now, I believe that the clerks ought to have $150 per month, as they are compelled to bear some of this burden that the Congressman bears. I believe this amendment, Mr. Chairman, ought to carry.

Mr. GILLETT. Mr. Chairman, I think this is a most inopportune time to press this amendment. In this bill the administration has shown a zeal for economy in every department of the Government, so that we have less estimates for increase of salaries than we have had for many years. There has been of late a great pressure for the increase in salaries of clerks in all the Government departments and throughout the country, to which Congress has not yielded, and if now we give this increase to our own clerks, while refusing it to all other clerks, I believe that public opinion will severely censure us. Regardless of the question of whether a clerk renders a service worth $2,000 or not, I think this year, when our administration is urging economy, and when this side of the House is going out and leaving a new majority, it will be suicidal and foolish for us to adopt this amendment.

Mr. RUCKER of Colorado. Will the gentleman yield?

Mr. GILLETT. Certainly.

Mr. RUCKER of Colorado. Will not the gentleman concede that at the time the $1,200 was fixed for salaries of clerks he could live much more cheaply than he can now? Does he not appreciate the fact that his living expense has crawled up from 25 to 30 per cent, and that he only received 25 per cent of an increase when he was raised from $1,000 to $1,200?

Mr. GILLETT. There was an increase of 25 per cent, and I do not think we ought to increase it again to-day when refusing other general increases.

Mr. HUGHES of New Jersey. What does a Senator's clerk get?

Mr. GILLETT. They get the same salary that the gentleman suggests.

Mr. HUGHES of New Jersey. Two thousand dollars?

Mr. GILLETT. All the officials at the other end of the Capitol get more than the officials here.

Mr. HUGHES of New Jersey. Is there any reason why a Senator's secretary should be paid more?

Mr. GILLETT. They claim that there is. I think there is more extravagance at the other end of the Capitol than there is here, and I should dislike to have us imitate it.

Mr. FITZGERALD. Mr. Chairman, I believe this is a very inopportune time to propose an increase in this compensation. Ever since the compensation of Members of Congress was increased the one argument used throughout the country in relation to the increased compensation of all Government employees has been that Congress increased its own salary, recognizing the conditions of increased cost of living, and these employees insisted on substantial increases in the Government service in all the departments. Now, it seems to me that at this time, during the closing hours of a Congress which is to go out within sixty-odd days, to be succeeded by a Congress of different political faith, it is not the time to be increasing the compensation of employees who are associated in any way with Members of this House in the discharge of their duties. I know how efficient, how hard working, and how necessary this clerical assistance is; but, at the same time, I do not believe that we should at this time vote this increase. I wish at least to appear in opposition to it.

Mr. MARTIN of South Dakota. Mr. Chairman, I shall support the amendment proposed by the gentleman from Illinois [Mr. MADDEN]. I believe not only that the clerks or private secretaries to Members ought to be compensated at $1,800 a year, but I think also that they ought to be placed upon the roll of the House as other regular employees of the House now are. There is this distinction between them and Government clerks residing in Washington: A Government clerk who is employed throughout the year can live in the city of Washington. Members' clerks have their traveling expenses to pay in order that they may perform the necessary confidential services to the Member and to attend to the public business of his constituents. The clerk ought to be with him during the months that the Member is at home and he ought to be with him during every session here at Washington. The matter of traveling expenses is a large item, probably a very large item if the private secretary has some family of his own in addition to himself to provide for.

This matter has been mooted at different times. I think it will meet the judgment of the House when fairly expressed that $1,800, considering the particular facts I have adverted to, is scarcely an adequate salary for the type of secretary that ought to be employed by a Member of Congress attending actively to the business of his constituents and the country at large. I do not know personally in my 10 years of service in this body of any class of public servants who work so many hours and for so inadequate compensation as the competent clerk or secretary of a Member of this body.

It may be urged with reason, I think, that a clerk to a Member of this House should have as much pay as a clerk to a Senator. They receive $2,000 per year. It is well known to the Members of this body that in addition to the clerk to the Senator they are provided with other help in the form of messengers and others, whom we do not have. It is certainly not more than is needed, and I think that as Members we need not fear any unjust criticism for doing what is plainly right in this regard. It is no more than just and right that the clerks to Members should receive $1,800 a year, and in my judgment they should also be placed upon the regular roll of the House. They can not be put on the roll of House employees in this appropriation bill against a point of order. I see no objection, however, to this increase, which is ruled to be in order by the Chair.

I desire to say further, before I take my seat, it is the experience of active Members of this body that they find the compensation now provided for clerks of Members inadequate to meet their necessary expenses for clerical help. Personally, it is not, perhaps, improper for me to say there has been scarcely a year since I have been a Member of this body that, in addition to the regular compensation allowed to me and by me turned over to my secretary, it has not been necessary for me to contribute out of my personal funds for the payment of a competent clerk, and I have no doubt many other Members of the House have had the same experience. I think we ought to sustain the amendment of the gentleman from Illinois.

Mr. MICHAEL E. DRISCOLL. Mr. Chairman, it may not be a gracious thing for a Member of the House to oppose an amendment which proposes to increase the salary of his clerk. Four years ago, when we increased our own salaries, I said it would be inconsistent for us to increase our salaries 50 per cent and not increase the salaries of the Government clerks all along down the line at the same ratio. We have been hearing from that ever since. I believe if there is going to be an increase in salaries, it ought not to be in the high but in the low places. Now, we should not consider alone our own clerks. We are allowed $1,500 to pay our clerk hire, and if we do not think $1,500 sufficient to pay for our clerks, why, then, we can contribute something from our own increased salaries to pay for the necessary assistance to be used in the discharge of our duties.

Mr. HUGHES of New Jersey. Will the gentleman yield to a question?

Mr. MICHAEL E. DRISCOLL. Yes.

Mr. HUGHES of New Jersey. Is it not a fact that a great many Members on your side have two clerks, one of them receiving $2,000 a year and the other $1,500, paid by the Government, one of the clerks being given to the Member as chairman of committee?

Mr. MICHAEL E. DRISCOLL. There will not be any Members on our side next year who will have two clerks, one of whom is a clerk to the Member and the other of whom is clerk to the chairman of the committee.

I am not at all interested in the people who are going to have them; but we on this side are going to stand on the ground floor next year and have nothing for assistants except the regular clerk hire of $1,500 a year. But I simply say, if we increase the allowances now from $1,500 to $1,800 or $2,000, it will be practically increasing our own salaries so much. It will be practically a grab out of the Treasury of $300 or $500 for ourselves to spend for clerk hire next year. The Republican Party here will be justly charged with making a grab

out of the Treasury in the last few days of our service here, if we do this, and I submit that we ought not to put ourselves in that position.

Mr. MARTIN of South Dakota. I suppose the gentleman has not overlooked the fact that this allowance will not begin until July 1, 1911.

Mr. MICHAEL E. DRISCOLL. That is correct, and I do not propose for one instant to give the Republican Party the record of trying to grab this little miserly sum out of the Treasury, which will be actually, in substance, an increase of our own salaries.

Mr. MANN. The gentleman talks about making a grab out of the Treasury.

Mr. MICHAEL E. DRISCOLL. That is what it is.

Mr. MANN. Is not this doing something that is proper when the parties change, so that that charge can not justly be made?

Mr. MICHAEL E. DRISCOLL. If they want it, let the Democrats take the responsibility of it next year.

Mr. HUGHES of New Jersey. Mr. Chairman, I desire to speak in favor of the amendment. We are all economists. There never was a man who conducted a raid on the Treasury who did not do it in the interests of economy, and the more money he expected to get out of it, the more he declaimed for economy. This question should not be decided altogether on the ground of how much it is going to cost the Government. There is also to be taken into consideration the naked fact whether or not the clerks of Members, who are supposed to be paid and are paid by the Government, are receiving adequate compensation for the services they render. This particular class of Government servants are in a category by themselves—they are set apart from all others. There is great difficulty in doing anything for them. Members have stated, I think upon the floor, at least I know many of them have in private conversation, that they are against increasing clerks' salaries because it is not mandatory upon the Member to turn this allowance over to the clerk, and that there must be some basis for this suggestion is eloquently shown by the fact that there is constant opposition in this House to any attempt to put the clerks upon a regular roll at a fixed salary, payable to them by the proper officer, where they rightfully belong. It seems that that can not be done. It seems also that for the reason that they are not upon the roll, objection is made to any attempt to increase their salaries, so that through no fault of their own they are ground between the upper and the nether millstones. They are between the devil and the deep sea all the time. So far as I am concerned, either proposition appeals to me. My clerk earns much more money than he receives from the Government.

I am not in a position to give him more compensation. I find it difficult enough under any circumstances, in view of the energetic fight made upon me in my district by our friends on the other side of the House, to save money enough to pay my campaign expenses each succeeding term. I have a first-class secretary, a man who can go into court and report cases, a man competent to hold a place upon the floor of this House or as a committee reporter; yet the men who do that work are paid $5,000 a year, and my clerk, who is so competent, works like a drudge for this small salary. He is growing older, as I am. A secretary may get married. In fact, my secretary is married. He has to keep his family and support himself here on $1,500 a year, in the meantime rendering services far beyond the higher amount that has been suggested here.

Now, why should this question as to whether or not these men are being amply and properly compensated be beclouded by these other considerations as to whether or not they are on a roll or as to whether or not the Members turn the allowance over to them? There should not be any such question. The House should decide this solely upon the ground whether or not these men are being amply and properly compensated for the valuable work that they do, and I hope that the committee will adopt the amendment.

Mr. ADAMSON. Mr. Chairman, I would be very glad indeed to have an increase in allowance for clerk hire, for it is almost impossible to secure competent persons to do the work that is necessary to be done, but I do not wish to have an employee in this House detailed to do this work. If I am to be allowed a private secretary, I want him to be my secretary, to work under my direction, to be in my confidence and under my control in order to help me, and it is not a particle of trouble to me to take the checks and indorse them to him or them—for it is often necessary to have more than one—and let them go on and draw the money and divide it.

I protest against the mockery of talking about allowing a Member a private secretary and then, in order to save the trouble of indorsing and passing the checks or cashing them, putting him on the rolls of the House and making him an official of the House. [Applause.]

Mr. MADDEN. Mr. Chairman, there ought not to be any question of politics in this. The only question involved is whether secretaries are worth more compensation than they are receiving. The question is whether the work they are doing is properly paid for. The question at issue is, Are we willing to go on record to do justice to a lot of men who give their time and experience to the service of the Government? All the men who are engaged as private secretaries to Members of the House are required to be trained in the line of work that they are called upon to do. It takes years of time to train them to become efficient secretaries. They have to give some years to the study of the work. They are required to be first-class stenographers, and they are also required to be able to operate a typewriting machine efficiently.

You can not find this class of men every day, and when you do find them you ought to be willing to pay them a compensation commensurate with the knowledge they have of the work they are required to do. In the commercial life of the Nation men who perform this kind of work get very much more pay than the men that are engaged as secretaries of Members of the House.

I may say that some Members of the House have so much work to do that they are required to have two or three men to perform it, and in some instances I know where men who serve here as Members pay as much as $4,500 for clerical work. They do not pay this because they want to be liberal with the secretary, but they simply pay it because they feel that they ought to do the work devolved upon them as Members of Congress.

Representing a district such as honors me with a seat here, I am called upon to answer at least fifty or sixty thousand letters every year, and if anybody can tell me of any secretary that can perform this work I would like to have his picture. I am obliged to employ three men most of the time to accomplish the work I am called upon to do or let the work go undone. While I am a Member of Congress I propose to do the work that devolves upon me to the best of my ability. Now, I am pleading not to have any additional compensation that may come to me, but for justice to the man that I employ as secretary. It is unfair to say that the increase of compensation to secretaries is a grab from the Treasury for the Member, for I assume that no Member of this House takes any part of the compensation that is given for clerk hire for his own use, and that no matter what the salary may be by a vote of this House every cent of that salary will go to the man if the increase is made.

Mr. MICHAEL E. DRISCOLL. Will the gentleman yield for a question?

Mr. MADDEN. Certainly.

Mr. MICHAEL E. DRISCOLL. The gentleman from Illinois states that he hires help outside of his regular secretary.

Mr. MADDEN. Certainly.

Mr. MICHAEL E. DRISCOLL. Then if you get this $300 will not that reduce the amount that you have to pay outside of the secretary's salary?

Mr. MADDEN. Not at all.

Mr. MICHAEL E. DRISCOLL. Of course it will, for you will not have to pay that much more.

Mr. MADDEN. No; I am asking this for the purpose of doing justice to the man who has to take charge of the work and direct the other people that I am obliged to employ. I believe that a man who has charge of the work of a Member ought to be paid commensurate with the work he is required to do. Ordinarily the longer he is in the service the more efficient he becomes, the more valuable he is to the people of the country, and I believe the more valuable he becomes the more he ought to be paid. For one Member of the House I am willing to go on record in favor of just compensation for men who are qualified to perform the work, which I believe is the most important work to be performed in the interest of good government and of the American people. [Applause.]

Mr. MACON. Mr. Chairman, gentlemen say they want to do justice to their secretaries and their clerks, and that that is the only reason for appealing to this House to give them an increase of compensation. I want to do justice to the poor devil who is working 16 hours a day in some country store, who is being taxed to help pay this compensation, and who would gladly surrender that job to take the one from me at $125 a month. That is the man I want to do justice to. I want to keep every burden off his back that I possibly can. It is idle for Members to talk about justice being done to their clerks, and all of them that vote for this proposition, Mr.

Chairman, will do so for the sole and express purpose of benefiting themselves, hoping that the increased compensation will enable them to secure the services of a clerk who will do a little more work for them. The gentleman from Illinois [Mr. MADDEN] says that he has to employ three clerks to do his work. I would not be personal for anything in the world, but I can call to mind now numbers of Representatives who are getting $125 a month each month for their secretaries who have not darkened the door of this House since Congress convened on the 5th day of this month. Gentlemen, do you think they ought to have any extra compensation for themselves or for their clerks?

Do you believe that that would be doing justice by the boys who till the soil, or stand behind the counters in the country stores for from 10 to 16 hours every day? Do you believe that would be doing justice by the toiling masses of the country from one end of it to the other? I want to say to you that, in my judgment, for the amount of work that the average clerk of a Congressman has to do—mind you, I say the average—they are the best paid young men that I know of anywhere. Their hours are short as a rule, and when they are at home on their vacations that sometimes last for six or seven months of the year, they do not write, many of them, over a dozen letters a day, and then they are at liberty to go out for a horseback ride, or take a row in a skiff, or enjoy some other sport or pleasure for the balance of the day.

Mr. BUTLER. Joy rides?

Mr. MACON. Yes; take joy rides, and yet Members tell us these clerks are not getting compensation sufficient to justify them in holding their positions.

Mr. Chairman, it is not incumbent upon the Government to give any Congressman a clerk.

It is gratuity, pure and simple, for the Government to supply Congressmen with clerks. We are supposed to do our own work, use our own brains, muscle, and skill, if we possess any. Yet the Government has magnanimously stepped in and said that it would take a part of the burden off our shoulders and give us somebody with younger legs, perhaps, than we have to run an errand for us now and then; give us some one a little more skilled with the typewriter to write our letters; somebody to relieve us of a part of the burden of the obligation that we have assumed. And, gentlemen, let me tell you that, in my judgment, we are all getting just about as much compensation as we earn. I hope no Democrat, at an hour when we are calling upon the country to give us its confidence, when we are complaining against the extravagances of the Republican Party, will give the lie to our declaration by casting a vote to put upon the backs of the people a burden of more than $200,000 by increasing the salaries of the clerks to the Congressmen. To do so will be to virtually increase our own emoluments of office.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois to the amendment offered by the gentleman from Colorado.

Mr. MANN. Let the amendment be reported.

The CHAIRMAN. Without objection, the Clerk will again report the amendment to the amendment.

There was no objection, and the Clerk again reported the amendment to the amendment.

The question was taken; and on a division (demanded by Mr. MADDEN) the ayes were 49 and the noes 61.

So the amendment to the amendment was rejected.

The CHAIRMAN. The question now is on the amendment offered by the gentleman from Colorado, and, without objection, that amendment will again be reported.

There was no objection, and the Clerk again reported the amendment.

The question was taken; and on a division (demanded by Mr. RUCKER of Colorado) there were—ayes 40, noes 78.

So the amendment was rejected.

Mr. MADDEN. Mr. Chairman, I now move to amend by making it $1,650.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

Page 28, lines 6 and 7, strike out the words "one thousand five hundred" and insert "one thousand six hundred and fifty."

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois.

The question was taken, and the amendment was rejected.

The Clerk read as follows:

For stationery for Members of the House of Representatives, Delegates from Territories, and Resident Commissioners, including $5,000 for stationery for the use of the committees and officers of the House, $54,750.

Mr. COOPER of Wisconsin. Mr. Chairman, I move to strike out the last word. I would like to inquire of the gentleman having the bill in charge, who buys stationery for the House of Representatives? Where does it come from? I ask this question because I have had some of the poorest paper upon which to write that I have ever had in my life. It is rough, miserable writing paper.

Mr. GILLETT. Our investigation did not go so far as to discover or inquire who did furnish the paper, and I can not tell the gentleman.

Mr. COOPER of Wisconsin. This appropriation is for stationery for Members, $54,750.

Mr. GILLETT. It is bought after advertising, after advertising for bids, and I know nothing about the details.

Mr. COOPER of Wisconsin. I think really, and I say it in good faith, there should be something in the way of an investigation before the contract for the stationery of the House is let again, because some of the paper, I have it now, is as poor writing paper as I have ever seen anywhere.

Mr. MANN. May I inquire what kind of paper?

Mr. COOPER of Wisconsin. It is small paper, and large paper, too.

Mr. MANN. Ordinary note paper?

Mr. COOPER of Wisconsin. It is not note size; no. It is longer from left to right as you lay it on the table. I do not know what you call it, but it is not up and down note paper.

Mr. MANN. It is not the ordinary stationery that is supplied.

Mr. COOPER of Wisconsin. It is stationery for the House of Representatives, and I have some of it in my office now.

Mr. MANN. That is not the ordinary stationery that is supplied; somebody must have ordered that paper specially.

Mr. GILLETT. It is just half size.

Mr. MANN. They furnish you the kind of paper you want. The ordinary paper we have is letterhead and notehead.

Mr. GILLETT. That is notehead with the heading printed on the side, probably.

Mr. MANN. The ordinary paper we get is very good paper.

Mr. COOPER of Wisconsin. The paper I have is not.

Mr. MANN. Probably somebody specially ordered it for you.

The Clerk read as follows:

Custody, care, and maintenance of Library building and grounds; Superintendent of the Library building and grounds, $5,000; chief clerk, $2,000; clerk, $1,600; clerk, $1,400; clerk, $1,000; messenger; assistant messenger; telephone switchboard operator; assistant telephone switchboard operator; captain of watch, $1,400; lieutenant of watch, $1,000; 16 watchmen, at $720 each; carpenter, $900; painter, $900; foreman of laborers, $900; 14 laborers, at $480 each; 2 attendants in ladies' room, at $480 each; 4 check boys, at $360 each; mistress of charwomen, $425; assistant mistress of charwomen, $300; 45 charwomen; chief engineer, $1,500; assistant engineer, $1,200; 3 assistant engineers, at $900 each; electrician, $1,200; machinist, $1,000; machinist, $900; 2 wiremen, at $900 each; plumber, $900; 3 elevator conductors, at $720 each; 10 skilled laborers, $720 each; in all, $71,105.

Mr. GILLETT. Mr. Chairman, I offer the following amendment, which I send to the Clerk's desk.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

On page 38, in line 11, after the word "thousand," strike out the word "one" and insert in lieu thereof the word "seven."

Mr. GILLETT. That simply corrects the total.

The question was taken, and the amendment was agreed to.

The Clerk read as follows:

CIVIL SERVICE COMMISSION.

For commissioner, acting as president of the commission, $4,500; two commissioners, at $4,000 each; chief examiner, $3,000; secretary, $2,500; assistant chief examiner, $2,250; 2 chiefs of division, at $2,000 each; examiner, $2,400; 3 examiners, at $2,000 each; 4 clerks of class 4; 4 examiners, at $1,800 each; 20 clerks of class 3; 26 clerks of class 2; 35 clerks of class 1; 29 clerks, at $1,000 each; 10 clerks, at $900 each; messenger; engineer, $840; telephone switchboard operator; 2 firemen; 2 watchmen; elevator conductor, $720; 3 laborers; and 3 messenger boys, at $360 each; in all, $204,510.

Mr. MANN. Mr. Chairman, I reserve the point of order on the paragraph. I would like to inquire of the gentleman how many increases of salary are given the Civil Service Commission?

Mr. GILLETT. There were five increases—no, there were six increases. There were 5 clerks at $840 dropped, and instead of that we gave an examiner at $2,400, a clerk of class 3, a clerk of class 2, a clerk of class 1, and one at $1,000.

Mr. MANN. Well, last year there were five clerks, at $840 each. Those are left out entirely. There were eight clerks of class 4. That is reduced to four, six out of the nine, and I assume that of those nine they had an increase of salary.

Mr. GILLETT. These assistant examiners were clerks of class 4, and we simply change their names.

Mr. MANN. Change their names?

Mr. GILLETT. And they have the same salary.

Mr. MANN. Yes.

Mr. GILLETT. A clerk of class 4 gets $1,800, and these four examiners are at $1,800 salary.

Mr. MANN. Why these increases? The gentleman stated, as I understood it a while ago, there were 15 or 20, or perhaps more, increases in this bill.

Why do the Civil Service Commission clerks get five of them? I had sort of been led to believe that the Civil Service Commission was one of those bodies that work mainly for the public good, or for their health, and not on account of compensation.

Mr. GILLETT. I think they do work for the public good. I agree with the gentleman there. But the clerks also work for compensation, and the purpose is this: They have to work not simply as clerks, but all of these men are doing examiner's work, passing on papers, and they represented to us very strongly what, of course, the gentleman knows is true, that the work is increasing constantly and largely, and the force is very much overworked, and these men at $840 could not be kept and could not be expected to be as efficient as they should be to pass on the examination papers. It is not easy work. It is a work that requires knowledge and judgment. They asked much more of an increase than we have given them, but we thought this was a fair amount of increase.

Mr. MANN. I am somewhat surprised that the work is increasing. It may be true, but I should have considerable doubt about that.

Mr. GILLETT. Of course, the gentleman appreciates it increases every year; the Government service increases every year, and the classification has increased. I do not believe there has been a year lately when there has not been an addition to the places brought within the civil service.

Mr. MANN. There has not been very much addition to the places in the civil service in the last two or three years.

Mr. GILLETT. The gentleman remembers the fourth-class postmasters?

Mr. MANN. A few postmasters, but not a very large number, and the number of new appointments is not increasing very greatly. Of course, the total number of places in the Government service has increased. I doubt whether there are as many applications now for appointments as there were two years ago.

Mr. GILLETT. I think the gentleman is mistaken.

Mr. MANN. I do not think I am mistaken, but I do not make any statement of that sort. If the gentleman says it is so, of his own knowledge or somebody else's, it is accepted by me.

Mr. GILLETT. I was informed so. Of course, I do not know it of my own knowledge. There were 384,000 persons in the civil service on June 30.

Mr. MANN. Oh, yes; that is true, and most of them live to be very old, and the gentleman has a bill now pending which realizes that fact. The Civil Service Commission employees do not resign and hardly ever die. Of course that is not literally true, but there are no such number of changes under the Government, probably, as there were a few years ago. It is getting to be a settled thing, to a large extent.

Mr. GILLETT. A great many here in Washington resign every year. There are a great many here temporarily, who are here to continue their studies, quite a large force, just in that one line. And the departments can not keep a great many, I am told, at the lower grades. The Patent Office was complaining to us. They are taken away from them to go out into business life.

Mr. MANN. The Patent Office is a school that educates men for use outside; but some one has to educate them, and it is perfectly proper the Government should educate those men.

Mr. GILLETT. But it gives just so much more work to the commission to let those men come in.

Mr. MANN. There is not a great amount of work.

Mr. CAMPBELL. I suggest that the number of civil-service employees in rural delivery and city delivery is due largely to the work of that commission. Every rural-route carrier now goes through the civil-service examination.

Mr. MANN. Well, there have not been any men come into the classified service in that way for several years, and, if I am correctly informed, there have been no new rural routes created for several years.

Mr. CAMPBELL. A number of new rural routes have been provided for.

Mr. MANN. And appropriation has been made——

Mr. CAMPBELL. And the carrier has taken an examination and is on the list ready to begin work whenever the routes are established.

Mr. MANN. Whenever the Post Office Department is through with overriding the will of Congress. Is that what the gentleman means?

Mr. CAMPBELL. I did not say that.

Mr. MANN. The gentleman has to be somewhat under the influence of the Postmaster General. I think a great deal of the Postmaster General, but he has no control over any appointees of mine.

Mr. CAMPBELL. Evidently the gentleman from Illinois has none.

Mr. MANN. Neither in that department nor any other. Well, I will withdraw the point of order, Mr. Chairman, although I have doubts about it.

The Clerk read as follows:

Expert examiners: For the employment of expert examiners not in the Federal service to prepare questions and rate papers in examinations on special subjects for which examiners within the service are not available, $2,500.

Mr. MACON. I reserve the point of order on that paragraph, Mr. Chairman, on page 42, relating to expert examiners. It looks to me we have too many examiners in connection with the Government now.

Mr. GILLETT. As a reason for an appropriation for this purpose, the commission stated that there very often came before them applications for men of special technical knowledge for whom there is no one in their force capable of making the examination. That for the Agricultural Department, for instance, where they employ a great many specialists, who have to be men of high education along special lines, they have not anybody in the office of the commission who can either prepare the papers or examine them after they have been filled. So they have been obliged to go to the very department where the men were to be appointed and ask that department to detail somebody who would make up the examination papers and then afterwards pass upon them. That seemed to us hardly a proper thing to do, at least it offers a very wide field for favoritism. Therefore they asked an appropriation of $5,000 to enable them now and then, when such examinations came up, to employ experts, not permanently, but just temporarily, in certain departments. We allowed them $2,500, half of what they asked. There are a great many specialists in different lines, and as you know all have been covered into the civil service, so you have got to go somewhere and get persons with special knowledge sufficient to prepare the papers and to make the examination.

Mr. MACON. Have they not in the department some persons that they can get to do it?

Mr. GILLETT. That is what they have been doing. They have had to go to the very department that needed the men. Of course they only would have that knowledge where they were going to use these very men, so that the department that was going to employ these men would be the one that would examine them, which really allows the same men to select just whom they please. That is not in accord with our general system. The department should not be permitted to select, but they should be selected by those on the outside, who are unprejudiced. The present law does not allow that, and therefore we thought we would give them this money as an experiment and see if it works well.

Mr. MACON. Mr. Chairman, we are trying too many experiments now and have got too many employees in the departments to conduct them. While I have great faith in the committee that prepared this bill, still we recognize that we have to make some cuts here and not go into new experiments. I must insist upon the point of order, that it is new legislation.

The CHAIRMAN. Does the gentleman from Massachusetts desire to be heard on the point of order?

Mr. GILLETT. No, sir.

The CHAIRMAN. Can the gentleman from Massachusetts point out any law giving authority for this work?

Mr. GILLETT. I am not aware of any law sustaining this.

The CHAIRMAN. The Chair sustains the point of order.

The Clerk read as follows:

For necessary traveling expenses, including those of examiners acting under the direction of the commission, and for expenses of examinations and investigations held elsewhere than at Washington, $12,000.

Mr. GILLETT. Mr. Chairman, I move the committee do now rise.

The question was taken, and the motion was agreed to.

The committee accordingly rose; and the Speaker having resumed the chair, Mr. CURRIER, Chairman of the Committee of the Whole House on the state of the Union, reported that that committee had had under consideration the bill H. R. 29360, the legislative, executive, and judicial appropriation bill, and had come to no resolution thereon.

ENROLLED BILL SIGNED.

Mr. WILSON of Illinois, from the Committee on Enrolled Bills, reported that they had examined and found truly enrolled bill of the following title, when the Speaker signed the same:

H. R. 27400. An act to repeal an act authorizing the issuance of a patent to James F. Rowell.

PHILIPPINE TARIFF.

The SPEAKER laid before the House the following message from the President of the United States (S. Doc. No. 709), which was read and, with the accompanying documents, referred to the Committee on Ways and Means and ordered to be printed:

To the Congress of the United States:

I transmit herewith for the consideration of Congress a report made by the Secretary of State, in which he presents a request made by the Spanish Chamber of Commerce of the Philippine Islands, through the royal Spanish legation at Washington, for a change of the maximum percentage of alcohol, fixed in paragraphs 262 and 263 of the Philippine tariff act (Stat. L., vol. 36, p. 164), for still wines at 14° to 15° in place of the fixed rate of 14°.

The suggestion of the Spanish Chamber of Commerce is approved by the War Department and the Government of the Philippine Islands, and would seem reasonable. I therefore recommend it favorably to the consideration of Congress.

WM. H. TAFT.

THE WHITE HOUSE, *December 16, 1910.*

EXPENDITURES IN THE STATE DEPARTMENT.

The SPEAKER also laid before the House the following message from the President of the United States, which was read and, with the accompanying documents, referred to the Committee on Expenditures in the State Department and ordered to be printed:

To the House of Representatives:

I transmit herewith a statement by the Secretary of State, with accompanying papers, of appropriations, expenditures, and balances of appropriations under the Department of State for the fiscal year ending June 30, 1910, as required by law.

WM. H. TAFT.

THE WHITE HOUSE, *December 16, 1910.*

HOLIDAY RECESS.

Mr. PAYNE. Mr. Speaker, I offer the following resolution.

The Clerk read as follows:

House concurrent resolution 55.

Resolved, That when the two Houses adjourn on Wednesday, December 21, they stand adjourned until 12 o'clock m. on Thursday, January 5, 1911.

Mr. PAYNE. Mr. Speaker, I ask for immediate consideration of the resolution.

The resolution was agreed to.

ADJOURNMENT.

Mr. GILLETT. I move that the House do now adjourn.

The motion was agreed to.

Accordingly (at 4 o'clock and 50 minutes p. m.) the House adjourned until Saturday, December 17, 1910, at 12 o'clock noon.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of Rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

1. A letter from the Secretary of the Treasury, transmitting an estimate of appropriation for rebuilding the assay office in New York City (H. Doc. No. 1208); to the Committee on Appropriations and ordered to be printed.

2. A letter from the Secretary of War, transmitting a copy of a letter from the Chief of Ordnance submitting an amendment to estimate of size of sum to be expended in office of Chief of Ordnance for skilled draftsmen, etc. (H. Doc. No. 1209); to the Committee on Appropriations and ordered to be printed.

3. A letter from the Secretary of State, transmitting information as to the distribution of the Nobel peace prize for 1911 (S. Doc. No. 708); to the Committee on Foreign Affairs and ordered to be printed.

4. A letter from the Secretary of the Treasury, transmitting an estimate of appropriation for repairs to the marine hospital at Key West, Fla. (H. Doc. No. 1210); to the Committee on Appropriations and ordered to be printed, with illustrations.

5. A letter from the Secretary of the Navy, transmitting a statement of documents received and distributed by the department during the fiscal year ended June 30, 1910 (H. Doc. No. 1211); to the Committee on Printing and ordered to be printed.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS.

Under clause 2 of Rule XIII,

Mr. GRAHAM of Pennsylvania, from the Committee on Expenditures in the Department of Agriculture, submitted a report of the expenditures in the Department of Agriculture (No. 1780), which said report was referred to the House Calendar.

ADVERSE REPORTS.

Under clause 2 of Rule XIII, adverse reports were delivered to the Clerk and laid on the table, as follows:

Mr. GILL of Missouri, from the Committee on Claims, to which was referred the bill of the House (H. R. 1881) for the relief of John H. Rheinlander, reported the same adversely, accompanied by a report (No. 1769), which said bill and report were laid on the table.

Mr. PRINCE, from the Committee on Claims, to which was referred the bill of the House (H. R. 6799) for the relief of John W. McCrath, reported the same adversely, accompanied by a report (No. 1770), which said bill and report were laid on the table.

Mr. GRAHAM of Pennsylvania, from the Committee on Claims, to which was referred the bill of the House (H. R. 13065) for the relief of William H. Rogers, reported the same adversely, accompanied by a report (No. 1771), which said bill and report were laid on the table.

Mr. KITCHIN, from the Committee on Claims, to which was referred the bill of the House (H. R. 16630) to refund legacy taxes illegally collected, reported the same adversely, accompanied by a report (No. 1772), which said bill and report were laid on the table.

Mr. HAWLEY, from the Committee on Claims, to which was referred the bill of the House (H. R. 846) for the relief of Thomas B. Gourley, reported the same adversely, accompanied by a report (No. 1773), which said bill and report were laid on the table.

Mr. MASSEY, from the Committee on Claims, to which was referred the bill of the House (H. R. 25785) for the relief of Charles Boster, reported the same adversely, accompanied by a report (No. 1774), which said bill and report were laid on the table.

Mr. CANDLER, from the Committee on Claims, to which was referred the bill of the House (H. R. 1113) entitling the owner of the launch *Elsa* to sue the United States for damages to said boat, reported the same adversely, accompanied by a report (No. 1775), which said bill and report were laid on the table.

Mr. KITCHIN, from the Committee on Claims, to which was referred the bill of the House (H. R. 1416) for the relief of the International Enameled Ware Co. and Stranski & Co., of New York City, N. Y., reported the same adversely, accompanied by a report (No. 1776), which said bill and report were laid on the table.

Mr. GOLDFOGLE, from the Committee on Claims, to which was referred the bill of the House (H. R. 8182) for the relief of J. M. Rodgers, reported the same adversely, accompanied by a report (No. 1777), which said bill and report were laid on the table.

Mr. SHACKLEFORD, from the Committee on Claims, to which was referred the bill of the House (H. R. 15918) for the relief of Abbie Bartleson, reported the same adversely, accompanied by a report (No. 1778), which said bill and report were laid on the table.

Mr. PATTERSON, from the Committee on Claims, to which was referred the bill of the House (H. R. 23245) for the relief of Silas A. Bryant, reported the same adversely, accompanied by a report (No. 1779), which said bill and report were laid on the table.

CHANGE OF REFERENCE.

Under clause 2 of Rule XXII, committees were discharged from the consideration of the following bills, which were referred as follows:

A bill (H. R. 28013) granting a pension to James W. Hollandsworth; Committee on Invalid Pensions discharged, and referred to the Committee on Pensions.

A bill (H. R. 29124) granting a pension to William Hinker; Committee on Invalid Pensions discharged, and referred to the Committee on Pensions.

A bill (H. R. 29411) granting an increase of pension to Tony Verrosso; Committee on Invalid Pensions discharged, and referred to the Committee on Pensions.

PUBLIC BILLS, RESOLUTIONS, AND MEMORIALS.

Under clause 3 of Rule XXII, bills, resolutions, and memorials were introduced and severally referred as follows:

By Mr. HULL of Iowa: A bill (H. R. 29496) to increase the efficiency of the Organized Militia, and for other purposes; to the Committee on Military Affairs.

By Mr. MORSE: A bill (H. R. 29497) to amend sections 1 and 3 of an act entitled "An act to authorize the cutting of timber, the manufacture and sale of lumber, and the preservation of the forests on the Menominee Indian Reservation, in the State of Wisconsin," approved March 28, 1908 (35 Stat. L., p. 51); to the Committee on Indian Affairs.

By Mr. SMITH of Michigan: A bill (H. R. 29498) to amend an act entitled "An act to regulate the employment of child labor in the District of Columbia;" to the Committee on the District of Columbia.

By Mr. BARTHOLDT: A bill (H. R. 29499) providing for the exchange of lands owned by individuals or corporations situate in the Petrified Forest Reserve in Arizona for other lands; to the Committee on the Public Lands.

By Mr. NICHOLLS: A bill (H. R. 29500) to repeal a proviso in the act making appropriations for the Post Office Department, approved June 2, 1900, relating to the hours of labor for letter carriers; to the Committee on the Post Office and Post Roads.

By Mr. LEGARE: A bill (H. R. 29501) fixing the compensation of the collector of customs for the district of Charleston; to the Committee on Expenditures in the Treasury Department.

By Mr. BURLEIGH: A bill (H. R. 29502) to provide for the purchase of a site and the erection of a public building thereon at Pittsfield, Me.; to the Committee on Public Buildings and Grounds.

By Mr. KEIFER: A bill (H. R. 29503) to promote the erection of a memorial in conjunction with a Perry's victory centennial celebration on Put-in-Bay Island during the year 1913 in commemoration of the one hundredth anniversary of the battle of Lake Erie and the northwestern campaign of Gen. William Henry Harrison in the War of 1812; to the Committee on Industrial Arts and Expositions.

By Mr. JOHNSON of South Carolina: A bill (H. R. 29504) to require the production of books and papers as evidence in State courts in certain cases; to the Committee on the Judiciary.

By Mr. PARKER (by request): A bill (H. R. 29505) to repeal an act entitled "An act to provide for terms of the United States circuit and district courts at Cumberland, Md.," approved March 21, 1892; to the Committee on the Judiciary.

By Mr. MOXLEY: A bill (H. R. 29506) to provide for the erection of a public building in Cicero, Cook County, Ill.; to the Committee on Public Buildings and Grounds.

By Mr. WOODS of Iowa: Resolution (H. Res. 877) authorizing the Speaker to appoint a committee to perform certain duties; to the Committee on Rules.

By Mr. FOELKER: Joint resolution (H. J. Res. 251) proposing an amendment to the Constitution of the United States; to the Committee on the Judiciary.

Also, joint resolution (H. J. Res. 252) proposing an amendment to the Constitution of the United States by abrogating that part of the Constitution which prohibits an export tax; to the Committee on Ways and Means.

Also, joint resolution (H. J. Res. 253) proposing an amendment to the Constitution of the United States; to the Committee on Election of President, Vice President, and Representatives in Congress.

By Mr. FOSTER of Vermont: Joint resolution (H. J. Res. 254) authorizing the President to extend an invitation to foreign Governments to send delegates to an international congress on social insurance; to the Committee on Foreign Affairs.

PRIVATE BILLS AND RESOLUTIONS.

Under clause 1 of Rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. ADAIR: A bill (H. R. 29507) granting an increase of pension to William J. Davisson; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29508) granting an increase of pension to James McKinley; to the Committee on Invalid Pensions.

By Mr. ALEXANDER of New York: A bill (H. R. 29509) granting a pension to Helen M. Williams; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29510) granting a pension to Margaret Hewitt; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29511) making provision for the promotion and retirement of Capt. Robert Edwin Peary, United States Navy; to the Committee on Naval Affairs.

By Mr. ANDERSON: A bill (H. R. 29512) granting an increase of pension to Samuel H. Delay; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29513) granting an increase of pension to George Zabriskie; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29514) granting an increase of pension to Harry W. Leitz; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29515) granting an increase of pension to William Newson; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29516) granting an increase of pension to James Milton Thomas; to the Committee on Invalid Pensions.

By Mr. ASHBROOK: A bill (H. R. 29517) granting a pension to David King; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29518) granting a pension to Mary J. Shannon; to the Committee on Invalid Pensions.

By Mr. AUSTIN: A bill (H. R. 29519) granting a pension to Anna Hill; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29520) granting a pension to Mollie Carmichael; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29521) granting an increase of pension to Louisa C. Chesney; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29522) granting an increase of pension to John Kennedy; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29523) granting an increase of pension to George W. Potter; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29524) granting a pension to Pearl Jones; to the Committee on Invalid Pensions.

By Mr. BARCLAY: A bill (H. R. 29525) granting an increase of pension to Thomas Taylor; to the Committee on Invalid Pensions.

By Mr. BYRNS: A bill (H. R. 29526) granting an increase of pension to Henry C. Musgrove; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29527) granting an increase of pension to John Walterman; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29528) for the relief of estate of John T. Shumate; to the Committee on War Claims.

Also, a bill (H. R. 29529) granting a pension to Sarah J. Lush; to the Committee on Invalid Pensions.

By Mr. BENNET of New York: A bill (H. R. 29530) granting an increase of pension to Catherine Studley; to the Committee on Invalid Pensions.

By Mr. BRADLEY: A bill (H. R. 29531) granting a pension to Bianca Blenker; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29532) granting an increase of pension to Edward Loreaux; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29533) granting an increase of pension to George H. Crist; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29534) granting an increase of pension to Henry Seibert; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29535) granting an increase of pension to Henry C. Zurner; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29536) granting an increase of pension to John Breiner; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29537) granting an increase of pension to George M. Ellis; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29538) granting an increase of pension to Eden Hunt; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29539) granting an increase of pension to Frederick W. Burns; to the Committee on Invalid Pensions.

By Mr. CALDER: A bill (H. R. 29540) granting an increase of pension to Annie L. Stoliker; to the Committee on Invalid Pensions.

By Mr. CANTRILL: A bill (H. R. 29541) granting an increase of pension to David James; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29542) granting an increase of pension to Sanford C. Wilhoite; to the Committee on Invalid Pensions.

By Mr. CARY: A bill (H. R. 29543) granting a pension to Mary E. Gardner; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29544) granting a pension to James H. Henderson; to the Committee on Pensions.

Also, a bill (H. R. 29545) granting an increase of pension to George H. Fisler; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29546) granting an increase of pension to James Allen; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29547) granting an increase of pension to James Ward; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29548) to remove the charge of desertion from record of Matthew Sloan; to the Committee on Military Affairs.

By Mr. CHAPMAN: A bill (H. R. 29549) granting an increase of pension to Joseph B. Wilson; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29550) granting an increase of pension to Lewis Daily; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29551) granting an increase of pension to Levi T. E. Johnson; to the Committee on Invalid Pensions.

By Mr. CLARK of Missouri: A bill (H. R. 29552) granting an increase of pension to Lycurgus Botkin; to the Committee on Invalid Pensions.

By Mr. COOPER of Wisconsin: A bill (H. R. 29553) granting an increase of pension to Emil Wiegleb; to the Committee on Invalid Pensions.

By Mr. COX of Ohio. A bill (H. R. 29554) granting an increase of pension to Benjamin K. Doudna; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29555) granting an increase of pension to Joseph Hime; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29556) granting an increase of pension to John G. Price; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29557) granting an increase of pension to Salem Williams; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29558) granting an increase of pension to James Kemp; to the Committee on Pensions.

Also, a bill (H. R. 29559) granting an increase of pension to Daniel Williams; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29560) granting an increase of pension to William K. Logan; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29561) granting an increase of pension to John M. Flynn; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29562) granting an increase of pension to Francis M. Mast; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29563) granting an increase of pension to Eugene Hewel; to the Committee on Pensions.

Also, a bill (H. R. 29564) granting an increase of pension to David Burks; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29565) granting an increase of pension to Jacob R. Stover; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29566) granting an increase of pension to William Brice; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29567) granting an increase of pension to Richard Burns; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29568) granting an increase of pension to Dennis Tracy; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29569) granting an increase of pension to Joseph Rodefer; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29570) granting an increase of pension to William D. Tod; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29571) granting an increase of pension to George W. Phipps; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29572) granting an increase of pension to Peter Larson; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29573) granting an increase of pension to Francis X. Kapps; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29574) granting an increase of pension to Clay Deckert; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29575) granting an increase of pension to Frank Emonnin; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29576) granting an increase of pension to Edward H. Schutt; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29577) granting an increase of pension to William Trew; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29578) granting an increase of pension to Jonathan H. Beard; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29579) granting an increase of pension to Isaiah Anderson; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29580) granting an increase of pension to Daniel Pottenger; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29581) granting an increase of pension to Jerry Zimmerman; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29582) granting a pension to Ira V. Ennis; to the Committee on Pensions.

Also, a bill (H. R. 29583) granting a pension to Nolan Read; to the Committee on Pensions.

Also, a bill (H. R. 29584) granting a pension to Ella H. Candy; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29585) granting a pension to Frank Thompson; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29586) granting a pension to Horace W. Hunt; to the Committee on Pensions.

Also, a bill (H. R. 29587) granting a pension to Charles E. Schindler; to the Committee on Pensions.

Also, a bill (H. R. 29588) granting a pension to Charles Mayrwieser; to the Committee on Pensions.

Also, a bill (H. R. 29589) granting a pension to James E. Martin; to the Committee on Pensions.

Also, a bill (H. R. 29590) to remove the charge of desertion against Peter Ehrstine; to the Committee on Military Affairs.

Also, a bill (H. R. 29591) to remove the charge of desertion standing against Lewis Wells; to the Committee on Military Affairs.

By Mr. CROW: A bill (H. R. 29592) granting an increase of pension to Norman H. Kyle; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29593) granting an increase of pension to Columbus Reynolds; to the Committee on Invalid Pensions.

By Mr. CRUMPACKER: A bill (H. R. 29594) granting a pension to John E. Clark; to the Committee on Pensions.

By Mr. CURRIER: A bill (H. R. 29595) granting a pension to Mary Ann Stevens; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29596) granting an increase of pension to Cyrus S. Bailey; to the Committee on Invalid Pensions.

By Mr. DENT: A bill (H. R. 29597) granting an increase of pension to Perry S. Grindle; to the Committee on Pensions.

Also, a bill (H. R. 29598) granting an increase of pension to Garrett Stanley; to the Committee on Invalid Pensions.

By Mr. DRAPER: A bill (H. R. 29599) granting an increase of pension to John T. Breeson; to the Committee on Pensions.

By Mr. DUREY: A bill (H. R. 29600) granting an increase of pension to Robert C. Dunnaff; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29601) granting an increase of pension to Elmina S. Ames; to the Committee on Pensions.

By Mr. ENGLEBRIGHT: A bill (H. R. 29602) granting a pension to Daniel P. Carter; to the Committee on Invalid Pensions.

By Mr. FAIRCHILD: A bill (H. R. 29603) granting an increase of pension to Lucian F. Hall; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29604) granting an increase of pension to Don C. Lewis; to the Committee on Invalid Pensions.

By Mr. FOCHT: A bill (H. R. 29605) granting an increase of pension to William Kemmory; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29606) granting an increase of pension to Israel A. Kent; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29607) granting an increase of pension to Henry Dunlap; to the Committee on Invalid Pensions.

By Mr. FORDNEY: A bill (H. R. 29608) granting a pension to Dell J. Harrington; to the Committee on Pensions.

Also, a bill (H. R. 29609) granting an increase of pension to George H. Palmer; to the Committee on Invalid Pensions.

By Mr. FORNES: A bill (H. R. 29610) granting an increase of pension to Emelia Stork; to the Committee on Invalid Pensions.

By Mr. GILLETT: A bill (H. R. 29611) granting an increase of pension to Albert H. Clarke; to the Committee on Invalid Pensions.

By Mr. GRAHAM of Illinois: A bill (H. R. 29612) granting an increase of pension to James Y. Gooch; to the Committee on Invalid Pensions.

By Mr. GRANT: A bill (H. R. 29613) granting an increase of pension to Alfred Duncan; to the Committee on Invalid Pensions.

By Mr. GRONNA: A bill (H. R. 29614) granting an increase of pension to James A. McConkey; to the Committee on Invalid Pensions.

By Mr. HAMER: A bill (H. R. 29615) granting an increase of pension to George Pool; to the Committee on Invalid Pensions.

By Mr. HAMLIN: A bill (H. R. 29616) for the relief of Louis Dunham; to the Committee on Military Affairs.

Also, a bill (H. R. 29617) granting a pension to James Holmes; to the Committee on Invalid Pensions.

By Mr. HAVENS: A bill (H. R. 29618) granting an increase of pension to Willis C. Hadley; to the Committee on Invalid Pensions.

By Mr. HOLLINGSWORTH: A bill (H. R. 29619) granting an increase of pension to James Moore; to the Committee on Invalid Pensions.

By Mr. HUBBARD of West Virginia: A bill (H. R. 29620) granting a pension to J. P. Fox; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29621) granting a pension to William L. Snider; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29622) for the relief of S. G. W. Morrison; to the Committee on War Claims.

Also, a bill (H. R. 29623) granting an increase of pension to Wesley E. Grimm; to the Committee on Invalid Pensions.

By Mr. HUGHES of West Virginia: A bill (H. R. 29624) granting an increase of pension to Sue E. Madden; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29625) granting an increase of pension to Charles B. Cundiff; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29626) granting an increase of pension to Willis Noel; to the Committee on Invalid Pensions.

By Mr. HULL of Iowa: A bill (H. R. 29627) granting an increase of pension to James McAfee; to the Committee on Invalid Pensions.

By Mr. HUMPHREY of Washington: A bill (H. R. 29628) granting an increase of pension to James N. Dudley; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29629) granting an increase of pension to Harlin Van Etten; to the Committee on Invalid Pensions.

By Mr. HOWLAND: A bill (H. R. 29630) granting an increase of pension to John P. McMahon; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29631) granting an increase of pension to F. R. Bell; to the Committee on Invalid Pensions.

By Mr. JOYCE: A bill (H. R. 29632) granting an increase of pension to William Gillespie; to the Committee on Invalid Pensions.

By Mr. KEIFER: A bill (H. R. 29633) granting an increase of pension to Albert G. E. Schaff; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29634) granting a pension to Oscar S. Bayliss; to the Committee on Pensions.

By Mr. KINKEAD of New Jersey: A bill (H. R. 29635) for the relief of Patrick Howe; to the Committee on Military Affairs.

By Mr. KÜSTERMANN: A bill (H. R. 29636) granting an increase of pension to John R. Lake; to the Committee on Invalid Pensions.

By Mr. LAMB: A bill (H. R. 29637) granting an increase of pension to Cornelia A. Nickels; to the Committee on Pensions.

By Mr. LANGHAM: A bill (H. R. 29638) granting an increase of pension to Ruben Lyle; to the Committee on Invalid Pensions.

By Mr. LAW: A bill (H. R. 29639) granting a pension to Hattie A. Winfield; to the Committee on Invalid Pensions.

By Mr. LEE: A bill (H. R. 29640) granting an increase of pension to John W. Chastain; to the Committee on Invalid Pensions.

By Mr. LENROOT: A bill (H. R. 29641) granting an increase of pension to James W. Dean; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29642) granting a pension to James M. Baker; to the Committee on Pensions.

By Mr. LINDBERGH: A bill (H. R. 29643) for the relief of Nathan Stewart; to the Committee on Military Affairs.

Also, a bill (H. R. 29644) granting an increase of pension to Daniel Delaney; to the Committee on Invalid Pensions.

By Mr. LOWDEN: A bill (H. R. 29645) to amend the military record of Jacob Koller; to the Committee on Military Affairs.

By Mr. McHENRY: A bill (H. R. 29646) granting a pension to Charles C. Diehl; to the Committee on Invalid Pensions.

By Mr. McKINLEY of Illinois: A bill (H. R. 29647) granting an increase of pension to John W. Parnell; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29648) granting an increase of pension to Martin Davis; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29649) granting an increase of pension to David Morgan; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29650) granting an increase of pension to David O. Giffin; to the Committee on Invalid Pensions.

By Mr. McLACHLAN of California: A bill (H. R. 29651) for the relief of Benjamin L. Gorsuch; to the Committee on Military Affairs.

Also, a bill (H. R. 29652) granting an increase of pension to Seabird Cochrane; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29653) granting a pension to Eliza De Rudio; to the Committee on Pensions.

By Mr. MARTIN of Colorado: A bill (H. R. 29654) for the relief of Parintha McCluer; to the Committee on Claims.

Also, a bill (H. R. 29655) for the relief of Charles A. W. Gordon; to the Committee on Claims.

Also, a bill (H. R. 29656) granting an increase of pension to Lorenzo D. Fountain; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29657) granting an increase of pension to Sidney R. Wolcott; to the Committee on Pensions.

Also, a bill (H. R. 29658) granting an increase of pension to Frederick Burnett; to the Committee on Invalid Pensions.

By Mr. MOON of Tennessee: A bill (H. R. 29659) granting an increase of pension to Emmor H. Price; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29660) granting an increase of pension to Elijah W. Fowler; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29661) to authorize the Secretary of War to reconvey a strip of land in Hamilton County, Tenn., to N. C. Steele; to the Committee on the Public Lands.

By Mr. MORGAN of Missouri: A bill (H. R. 29662) granting an increase of pension to Abraham Van Meter; to the Committee on Invalid Pensions.

By Mr. MORRISON: A bill (H. R. 29663) granting an increase of pension to James M. Blankenship; to the Committee on Invalid Pensions.

By Mr. NYE: A bill (H. R. 29664) granting a pension to Nicholas Murphy; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29665) granting a pension to Emeline R. Bishop; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29666) granting an increase of pension to Eben E. Fuller; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29667) granting an increase of pension to Daniel W. Getchell; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29668) granting an increase of pension to Charles A. Wyeth; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29669) granting an increase of pension to Oliver E. Tillotson; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29670) to correct the military record of James H. Bishop; to the Committee on Military Affairs.

By Mr. OLCOTT: A bill (H. R. 29671) for the relief of Bvt. Brig. Gen. George B. Dandy, retired; to the Committee on War Claims.

By Mr. PETERS: A bill (H. R. 29672) for the relief of Thomas C. Hyde; to the Committee on Claims.

Also, a bill (H. R. 29673) granting an increase of pension to Frank S. Kelley; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29674) for the relief of the heirs of the late Maj. Daniel Madden; to the Committee on War Claims.

By Mr. RAINEY: A bill (H. R. 29675) granting an increase of pension to Thaddeus C. White; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29676) granting a pension to Rachel Millert; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29677) granting an increase of pension to Henry Wilkins; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29678) granting a pension to Jennie C. Curtis; to the Committee on Invalid Pensions.

By Mr. RICHARDSON: A bill (H. R. 29679) granting a pension to John S. Edmonds; to the Committee on Pensions.

Also, a bill (H. R. 29680) granting a pension to Sandy G. Watson; to the Committee on Pensions.

By Mr. SHEFFIELD: A bill (H. R. 29681) granting an increase of pension to Thomas Blacklock; to the Committee on Invalid Pensions.

By Mr. SIMMONS: A bill (H. R. 29682) granting an increase of pension to Sarah McDonough; to the Committee on Invalid Pensions.

By Mr. SPARKMAN: A bill (H. R. 29683) granting an increase of pension to Stephen Phillips; to the Committee on Invalid Pensions.

By Mr. STEENERSON: A bill (H. R. 29684) granting an increase of pension to John Keenan; to the Committee on Invalid Pensions.

By Mr. STEPHENS of Texas: A bill (H. R. 29685) for the relief of Alfred J. Drake; to the Committee on Military Affairs.

By Mr. STEVENS of Minnesota: A bill (H. R. 29686) for the relief of Robert M. Cannon, administrator; to the Committee on War Claims.

Also, a bill (H. R. 29687) granting an increase of pension to James Coffman; to the Committee on Invalid Pensions.

By Mr. TAYLOR of Colorado: A bill (H. R. 29688) granting an increase of pension to James A. Gooch; to the Committee on Invalid Pensions.

By Mr. THISTLEWOOD: A bill (H. R. 29689) granting an increase of pension to Matilda Houser; to the Committee on Invalid Pensions.

By Mr. THOMAS of Ohio: A bill (H. R. 29690) for the relief of the executrix of the late Gen. Gilbert S. Carpenter; to the Committee on Claims.

By Mr. VREELAND: A bill (H. R. 29691) granting an increase of pension to Michael Schone; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29692) granting an increase of pension to Hiram Keith; to the Committee on Invalid Pensions.

By Mr. WHEELER: A bill (H. R. 29693) granting an increase of pension to Sebastain Gross; to the Committee on Invalid Pensions.

By Mr. WILSON of Pennsylvania: A bill (H. R. 29694) granting an increase of pension to Eugene B. Guild; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29695) granting an increase of pension to George T. Michaels; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29696) granting an increase of pension to John S. McGinness; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29697) granting an increase of pension to Charles Bruner; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29698) granting an increase of pension to Francis Lombard; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29699) granting an increase of pension to G. W. Rogers; to the Committee on Invalid Pensions.

Also, a bill (H. R. 29700) granting an increase of pension to Johnathan Erdman; to the Committee on Invalid Pensions.

By Mr. WOOD of New Jersey: A bill (H. R. 29701) granting an increase of pension to Thomas Skillman; to the Committee on Invalid Pensions.

By Mr. WOODYARD: A bill (H. R. 29702) granting an increase of pension to William H. Bishop; to the Committee on Invalid Pensions.

By Mr. YOUNG of Michigan: A bill (H. R. 29703) granting an increase of pension to Stephen Loranger; to the Committee on Invalid Pensions.

By Mr. HUMPHREY of Washington: A bill (H. R. 29704) granting an increase of pension to Jane Quint; to the Committee on Invalid Pensions.

By Mr. WEEKS: A bill (H. R. 29705) granting a pension to David K. Arrand; to the Committee on Pensions.

PETITIONS, ETC.

Under clause 1 of Rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

By the SPEAKER: Memorial of the Allied Printing Trades Council of Washington, D. C., praying for the repeal of the tax on oleomargarine; to the Committee on Agriculture.

Also, memorial of the United States History Class, of St. Louis, Mo., praying for legislation for the caring of dairy products; to the Committee on Agriculture.

Also, memorial of Venango Grange, Patrons of Husbandry, of Pennsylvania, praying for legislation to prevent the substitution of oleomargarine for dairy products; to the Committee on Agriculture.

Also, memorials of Cole Bros., of Marshall; Straus Bros., A. M. Basch & Son, Edward Buy, Straus & Louis Co., Platt Bros. & Co., and H. L. Williams, all of Danville; also Erzinger Bros., of Kankakee, all in the State of Illinois, and other merchants, protesting against the enactment of a parcels-post law; to the Committee on the Post Office and Post Roads.

Also, memorial of the Lowell Meservey Hardware Co., of Colorado Springs, Colo., protesting against legislation for the extension of the parcels-post service; to the Committee on the Post Office and Post Roads.

Also, memorial of the legislature of Louisiana, protesting against the draining of the swamp land in Atchafalaya district before the banks of the Mississippi River have been prepared for the additional flow of water; to the Committee on Levees and Improvement of the Mississippi River.

Also, memorial of the City Council of Newark, N. J., praying that the Panama Exposition may be located in New Orleans, La.; to the Committee on Industrial Arts and Expositions.

Also, memorial of the Municipal Council of Tudela, Cebu, P. I., approving of the proposition for immediate independence of the Philippine Islands; to the Committee on Insular Affairs.

Also, petition of the employees at the navy yard at Charleston, S. C., protesting against the system of civil-service retirement which curtails the present salaries of the employees; to the Committee on Reform in the Civil Service.

Also, memorial of Mrs. Clara Hayward Harris, of New York City, on the subject of high wages and the laws relating thereto; to the Committee on Ways and Means.

Also, memorial of Kenesaw Post, Grand Army of the Republic, of Danville, Ill., protesting against the passage of the volunteer officers' retirement bill; to the Committee on Military Affairs.

Also, memorial of G. R. Nokes and I. N. Nokes, of Watonga, Okla., approving of the movement for suffrage for women; to the Committee on the Judiciary.

Also, memorial of the Hoopeston (Ill.) Retail Merchants' and Business Men's Association, praying that the World's Panama Exposition may be located at New Orleans, La.; to the Committee on Industrial Arts and Expositions.

Also, memorial of the West & Slade Grocery Co., protesting against the enactment of a parcels-post law; to the Committee on the Post Office and Post Roads.

Also, memorial of the Military Tract Educational Association of Illinois, protesting against Government aid under the Morrill Act for education in the District of Columbia; to the Committee on the District of Columbia.

Also, memorial of the Trans-Mississippi Commercial Congress, praying for legislation for the further regulation of railroads and the improvement of rivers and harbors, etc.; to the Committee on Interstate and Foreign Commerce.

Also, memorial of the Hinde-Dauch Paper Co., of Sandusky, Ohio, praying for legislation to give authority to the Interstate Commerce Commission to make classification of freight uniform; to the Committee on Interstate and Foreign Commerce.

Also, memorial of the Brotherhood of Locomotive Firemen and Enginemen, protesting against legislation which will curtail the revenues of railroads; to the Committee on Interstate and Foreign Commerce.

By Mr. ADAMSON: Petitions of merchants of Woodbury, La Grange, Newnan, Columbus, and Greenville, all in the State of Georgia, for regulation of express charges by the Interstate Commerce Commission; to the Committee on Interstate and Foreign Commerce.

Also, petition of certain merchants of Columbus and Villa Rica, both in the State of Georgia, against a parcels-post law; to the Committee on the Post Office and Post Roads.

By Mr. ALEXANDER of New York: Petition of Cranford Faun, the Corn Exchange, and others, of Erie County, N. Y., against the Tou Velle bill; to the Committee on the Post Office and Post Roads.

By Mr. ANDERSON: Petition of Retail Merchants' Association of Washington, D. C., approving resolutions of Retail Clerks' Association No. 262; to the Committee on Reform in the Civil Service.

Also, petition of Canfield Post, No. 124, Grand Army of the Republic, of Gibsonburg, Ohio, for amendment to the age pension act; to the Committee on Invalid Pensions.

By Mr. ASHBROOK: Paper to accompany bill for relief of Robert E. Eddy; to the Committee on Military Affairs.

Also, petition of Ricksecker Post, No. 469, Grand Army of the Republic, of Canal Dover, Ohio, for amendment to the age pension act; to the Committee on Invalid Pensions.

By Mr. BATES: Petition of Beaver Lumber Co., of Springboro, Pa., against the Tou Velle bill; to the Committee on the Post Offices and Post Roads.

Also, petition of citizens and taxpayers of the United States, favoring Senate bill 5677, for benefit of the Life-Saving Service; to the Committee on Interstate and Foreign Commerce.

Also, petitions of Cloverdale Grange, No. 1111, and West Green Grange, No. 1296, Patrons of Husbandry, favoring amendment of the oleomargarine law (S. 5842); to the Committee on Agriculture.

Also, petitions of D. G. Curtis, of the Erie Lumber Co.; W. Ed. Marsh; John J. Miller, secretary of the Mutual Telephone Co.; H. Hinrichs, jr., secretary of the Keystone Fish Co.; Charles S. Clark, secretary of Constable Bros.; F. F. Lippitt, secretary of the Automatic Oil Can Co.; J. B. Patterson, secretary of the United States Chair Co.; J. D. Jenkins, of Schaffner Bros.; A. J. Sterrett, secretary of the Erie Malleable Iron Co.; F. P. Hatch, of E. W. Hatch Co.; Hall Bros. & Co.; George F. Hall, treasurer of the American Sterilizer Co.; E. G. Caflisch, of the Beaver Lumber Co.; F. W. Agnew, secretary of the Business Men's Association; E. W. Irwin, president of the Erie Storage & Carting Co.; J. E. Sternberg, vice president of the First National Bank; William B. Trask, president of the Marine National Bank; and Henry T. Sevin, against the passage of the Tou Velle bill; to the Committee on the Post Office and Post Roads.

By Mr. BARCLAY: Petition of Newton Grange, No. 1357, Patrons of Husbandry, of Mehaffy, Pa., for Senate bill 5842; to the Committee on Agriculture.

By Mr. BURKE of South Dakota: Petition of H. G. Riveling, against a parcels-post law; to the Committee on the Post Office and Post Roads.

Also, petition of citizens of White Lake, S. Dak., for the Dodds bill (H. R. 22239); to the Committee on the Post Office and Post Roads.

By Mr. BYRNS: Papers to accompany bills for relief of Henry C. Musgrove, Sarah J. Lush, and John Wollermon; to the Committee on Invalid Pensions.

Also, paper to accompany bill for relief of J. T. Shumate; to the Committee on War Claims.

By Mr. CARY: Petition of citizens of Milwaukee, for Senate bill 5677, relative to benefit of the Life-Saving Service; to the Committee on Interstate and Foreign Commerce.

Also, petition of Local No. 262, Retail Clerks' International Protective Association, against proposed plan to increase hours of Government employees; to the Committee on Labor.

Also, petition of H. L. Russell, dean of Agricultural College of Wisconsin, for House bill 15422; to the Committee on Agriculture.

By Mr. COOPER of Wisconsin: Petition of legislature of Wisconsin, for enactment of House bill 39, relative to extending limits of Shiloh National Park; to the Committee on Military Affairs.

By Mr. COX of Ohio: Petition of Butler Encampment of Odd Fellows, of Hamilton, Ohio, for legislation making it a criminal offense for any person, firm, or corporation to publish, sell, or offer for sale what purports to be the written work of any fraternal order; to the Committee on the Judiciary.

Also, petition of Mitchell Post, No. 361, Grand Army of the Republic, of Camden, Ohio, and Milton Weaver Post, No. 594. Grand Army of the Republic, of Vandalia, Ohio, for amendment of the age pension bill; to the Committee on Invalid Pensions.

By Mr. DICKINSON: Paper to accompany bill for relief of Anna L. Yaple; to the Committee on Invalid Pensions.

By Mr. DRAPER: Petition of Fort Edwards Brewing Co., for removal of duty on barley; to the Committee on Ways and Means.

By Mr. ENGLEBRIGHT: Petition of Pacific Slope Congress, regarding a breakwater at Monterey Bay; to the Committee on Rivers and Harbors.

Also, petition of D. A. Russell and others, against the Tou Velle bill; to the Committee on the Post Office and Post Roads.

Also, petition of the California Society of Sons of the Revolution, regarding unpublished archives of the War of the Rebellion; to the Committee on Printing.

Also, petition of Pacific Slope Congress, regarding a national highway; to the Committee on the Post Office and Post Roads.

By Mr. FOCHT: Petition of officers of Milford Grange, No. 773, Patrons of Husbandry, of Juniata County, Pa., favoring Senate bill 5842, relative to oleomargarine law; to the Committee on Agriculture.

By Mr. GARNER of Texas: Petition of Schertz (Tex.) Camp, No. 1262, Woodmen of the World, favoring the Dodds bill; to the Committee on the Post Office and Post Roads.

By Mr. HAMER: Paper to accompany bill for relief of George Pool; to the Committee on Invalid Pensions.

By Mr. HAMMOND: Petition of committee of employees of Chicago Great Western Railway at Mankato, Minn., for hearings on railway rates; to the Committee on Interstate and Foreign Commerce.

Also, petition of Minnesota Canners' Association, for Federal inspection of canning factories and canned products; to the Committee on Agriculture.

By Mr. HAVENS: Paper to accompany bill for relief of Willis C. Hadley; to the Committee on Invalid Pensions.

By Mr. HUBBARD of West Virginia: Paper to accompany bill for relief of James W. Hollandsworth; to the Committee on Pensions.

Also, papers to accompany bills for relief of William H. Huffman and Amanda C. Swiger; to the Committee on Invalid Pensions.

By Mr. JOHNSON of South Carolina: Paper to accompany bill for relief of Charles Ladshaw; to the Committee on Pensions.

By Mr. JOYCE: Petitions of Dresden (Ohio) Post, No. 415, and Newport (Ohio) Post, No. 489, Grand Army of the Republic, for amendment to the age pension act; to the Committee on Invalid Pensions.

By Mr. LANGHAM: Petition of Walter Richards, of Brookville, Pa., against a parcels-post law; to the Committee on the Post Office and Post Roads.

Also, petition of Brookville (Pa.) Brewing Co., for removal of the tariff on barley; to the Committee on Ways and Means.

By Mr. LEE: Paper to accompany bill for relief of James Malloy; to the Committee on Pensions.

By Mr. McHENRY: Petitions of Granges Nos. 34, 941, 924, 365, and 1338, for Senate bill 5842 and House bill 20582; to the Committee on Agriculture.

By Mr. MARTIN of Colorado: Paper to accompany bill for relief of Benjamin Dwight Critchlow; to the Committee on War Claims.

By Mr. MOON of Pennsylvania: Petition of David Lupton's Sons Co., of Philadelphia, Pa., favoring New Orleans for the Panama Canal Exposition; to the Committee on Industrial Arts and Expositions.

By Mr. MOON of Tennessee: Paper to accompany bill for relief of E. H. Price; to the Committee on Invalid Pensions.

Also, papers to accompany a bill to authorize the Secretary of War to resurvey a strip of land in Hamilton County, Tenn.; to the Committee on Claims.

Also, paper to accompany bill for relief of Elijah W. Fowler; to the Committee on Invalid Pensions.

By Mr. MOORE of Pennsylvania: Petition of the Civil Service Reform Association of Pennsylvania, to enlarge scope of civil-service law; to the Committee on Reform in the Civil Service.

Also, petition of Coppack Warner Lumber Co., of Philadelphia, Pa., favoring New Orleans for the Panama Exposition; to the Committee on Industrial Arts and Expositions.

Also, petition of Retail Clerks' International Protective Association, Local No. 262, against increase of labor hours for Government employees; to the Committee on Labor.

By Mr. ROTHERMEL: Petition of David W. Bohn and Henry A. Miller, of Grange No. 551, Patrons of Husbandry, of Shoemakersville, Pa., for amendment of law on oleomargarine (S. 5842); to the Committee on Agriculture.

By Mr. SHEFFIELD: Papers to accompany bills for relief of Thomas Blacklock, William G. Baker, and Margarite D. Pollard; to the Committee on Invalid Pensions.

By Mr. SHEPPARD: Paper to accompany bill for relief of George W. Davis; to the Committee on Pensions.

By Mr. WOOD of New Jersey: Memorial of Woman's Literary Club of Bound Brook, N. J., asking for the speedy and thorough investigation of the spread of disease to human beings from dairy products; to the Committee on Agriculture.

Also, affidavits to accompany House bill granting an increase of pension to Thomas Skillman; to the Committee on Invalid Pensions.

Also, petition of R. V. Kuser, of the People's Brewing Co., of Trenton, N. J., for the removal of the tariff on barley; to the Committee on Ways and Means.

By Mr. VREELAND: Petition of Jamestown Brewing Co., for removal of duty on barley; to the Committee on Ways and Means.

SENATE.

SATURDAY, *December 17, 1910.*

Prayer by the Chaplain, Rev. Ulysses G. B. Pierce, D. D.

The Journal of yesterday's proceedings was read and approved.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by W. J. Browning, its Chief Clerk, announced that the House had passed a concurrent resolution providing that when the two Houses adjourn on Wednesday, December 21, they stand adjourned until 12 o'clock m., Thursday, January 5, 1911, in which it requested the concurrence of the Senate.

ENROLLED BILL SIGNED.

The message also announced that the Speaker of the House had signed the enrolled bill (H. R. 27400) to repeal an act authorizing the issuance of a patent to James F. Rowell, and it was thereupon signed by the Vice President.

HOLIDAY RECESS.

Mr. HALE. I ask the Chair to lay before the Senate the privileged resolution from the House.

The VICE PRESIDENT laid before the Senate the following concurrent resolution (H. Con. Res. 55) of the House of Representatives, which was read:

IN THE HOUSE OF REPRESENTATIVES,
December 16, 1910.

Resolved by the House of Representatives (the Senate concurring), That when the two Houses adjourn on Wednesday, December 21, they stand adjourned until 12 o'clock m., Thursday, January 5, 1911.

Mr. HALE. I move that the concurrent resolution be referred to the Committee on Appropriations.

The motion was agreed to.

PETITIONS AND MEMORIALS.

The VICE PRESIDENT presented memorials of sundry citizens and business firms of Nixon and Fort Worth, Tex.; of Elwood, Ind.; of Bellefontaine, Ohio; of Kankakee, Ill.; and of Demopolis, Ala., remonstrating against the passage of the so-called parcels-post bill, which were referred to the Committee on Post Offices and Post Roads.

Mr. CULLOM presented a petition of the Retail Grocers' Association of Joliet, Ill., praying for the repeal of the present oleomargarine law, which was referred to the Committee on Agriculture and Forestry.

He also presented a memorial of Kenesaw Post, No. 77, Department of Illinois, Grand Army of the Republic, of Danville, Ill., remonstrating against the establishment of a volunteer officers' retired list, which was referred to the Committee on Military Affairs.